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Number 1350

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

BOSSIER PARISH SCHOOL BOARD, ET AL,
Petitioners,

versus

URA BERNARD LEMON, ET AL,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JACK P. F. GREMILLION,
Attorney General, State of Louisiana

WILLIAM P. SCHULER,
Assistant Attorney General,
State of Louisiana

LOUIS H. PADGETT, JR.,
District Attorney, Bossier Parish,
Louisiana

J. BENNETT JOHNSTON, JR.
Counsel for Petitioners
406 Lane Building
Shreveport, Louisiana 71101

LECOMTE, SHREVEPORT, LOUISIANA

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URA BERNARD LEMON, ET AL,
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Petitioners pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit entered in the above case on January 5, 1967, rehearing denied February 6, 1967.

CITATIONS TO OPINIONS BELOW

The opinion and decree of the district court (Record 98-116) printed in appendix A hereto, infra, page 18, is reported as Lemon vs. Bossier Parish School Board et al 240 F Supp 709; the opinion of the district court on rehearing (record 112-124), printed in appendix A hereto,

infra, page 21, is reported at 240 F Supp 743. The opinion of the circuit court of appeals, printed in exhibit A, infra, page 37, is reported at 370 F2d 847, Subnom Bossier Parish school Board et al v Lemon et al.

JURDISDICTION

The decision of the circuit court of appeals was rendered on January 5, 1967; Rehearing was denied on February 6, 1967; The jurisdiction of this court is invoked under 28 USCA, Sec. 1254 (1).

QUESTIONS PRESENTED

1. Does a *non-resident* of a state have standing to sue under the Equal Protection Clause or the *Broyn* decision to enforce integration of public schools?

2. Did a legally enforceable "contract" result from the signing of an "assurance" by the Bossier Parish School Board in connection with the receipt of federal school construction funds (pursuant to 20 USCA 631-635) prior to the effective date of the Civil Rights Act of 1964, so as to give these negro plaintiffs standing to sue as third party beneficiaries of said contract?

3. Do these plaintiffs have standing to sue and enforceable rights to public education in Bossier Parish by reason of the receipt by the defendant School Board of federal maintenance

and operation funds (pursuant to 20 USCA 236-244) subsequent to the effective date of the Civil Rights Act of 1964, when no "assurances" of any kind were required in connection with the payment of these funds?

STATUTES INVOLVED

Statutory and constitutional provisions involved in this case which are printed in appendix B, infra, page 44, et seq., are as follows: United States Constitution Article I, Section 8, Clause 17; United States Constitution, 14th Amendment Sec 1; 20 United States Code 236-244; 20 United States Code 631-645; Civil Rights Act of 1964, Section 601 (42 USC, Sec. 2000 d); Civil Rights Act of 1964, Section 602 (42 United States Code, Sec. 2000 d-1).

STATEMENT OF THE CASE

This school desegregation case is brought by negro plaintiffs against the Bossier Parish (Louisiana) School Board and its superintendent on authority of the Equal Protection Clause of the 14th Amendment and the *Brown* decision. The United States intervened under the provisions of the Civil Rights Act of 1964 (Section 902). Plaintiffs sought desegregation of public education in Bossier Parish in all its phases.

In due course, defendants filed a motion to dismiss for failure to state a claim, on the ground that plaintiffs did not reside in Bossier Parish, but rather at Barksdale Air Force Base, Louisiana, and that, as non-residents of

Bossier Parish, they had no enforceable rights with regard to public education in Bossier Parish; defendants further maintained that since plaintiffs have no right to bring suit on their own behalf, they have no right to champion the rights of other Bossier Parish negroes who may have such rights (Record p. 63-64).

Plaintiffs filed a motion for summary judgment, alleging that on the basis of the complaint together with affidavits and defendants' answers to plaintiff's interrogatories, there was no genuine issue as to any material fact (Record p. 62).

Plaintiffs' motion for summary judgment and defendants' motion to dismiss for failure to state a claim were argued and briefed at the same time, and on April 13, 1965, the Court entered its findings of fact, conclusions of law and decree sustaining plaintiffs' motion for summary judgment and overruling defendants' motion to dismiss for failure to state a claim. (Record 98, et seq).

The Court based its ruling upon the argument that these non-resident plaintiffs have enforceable rights to public education in Bossier Parish schools by reason of the receipt by the School Board of federal funds; more particularly, on the basis of an affidavit attached to plaintiffs' motion for summary judgment, the Court concluded that, a) the receipt by the Bossier Parish School Board of federal funds for school construction under 20 USCA 631-645 prior to the effective date of the Civil Rights Act, constituted a contract between the federal government and the Bossier Parish School Board, inasmuch as the School Board

had signed an "assurance" to the effect that federal children would be educated on the same terms as other children in the school district; accordingly, the Court concluded that these non-resident Negro plaintiffs were third-party beneficiaries to this contract, and b) the court held that acceptance of federal funds for maintenance and operation pursuant to 20 USCA 236-244, subsequent to the effective date of the Civil Rights Act, obligated the School Board to provide the education for which payments were received, notwithstanding the fact that no assurances of any kind were required by the government as a prerequisite to paying the funds.

The district court's decree required the defendants to submit a plan for desegregation of Bossier Parish schools and enjoined the defendants from operating a compulsary bi-racial school system (Record 113, et seq.); from this decree the defendants appealed to the United States Court of Appeals for the Fifth Circuit. (In due course a plan was approved by the district court, from which decree the plaintiffs and the United States perfected appeals; the issues presented by this second appeal were argued separately and independently from the instant decision, and are not here at issue.)

The United States Court of Appeals for the Fifth Circuit on January 5, 1967 *affirmed* the decision of the district court, rehearing denied without opinion February 6, 1967. The opinion of the Fifth Circuit is printed in appendix A, infra, page 37, and is reported as Bossier Parish School Board v Lemon 370 F2d 847.

REASONS FOR GRANTING THE WRIT

1. The opinion and decree of the district court as affirmed by the Court of Appeals for the Fifth Circuit, presents questions of basic importance under the 14th Amendment, applicable "federal aid" to schools statutes (school construction funds 28 USCA 631-645 and school maintenance and operations funds 20 USC 236-244) and the Civil Rights Act of 1964.

A

Under the terms of the 14th Amendment and pursuant to the jurisprudence of this court and the subordinate district courts, only a "person" who is "within the jursidiction" of the state, may invoke federal jurisdiction to redress the deprivation by the state of the equal protection of the law. Thus, the 14th Amendment provides that:

> "Nor shall any state . . . deny to any person *within its jurisdiction* the equal protection of the laws." (Emphasis supplied)

This court has held that only persons subject to the jurisdiction of a state have legal power to sue to vindicate rights under the 14th Amendment. See *U. S. v. Wong Kim Ark*, 169 US 649, 18 S. Ct. 456, 42 L. Ed. 890, *Elk v. Wilkins*, 112 U. S. 94, 5 S. Ct. 41, 28 L. Ed. 643.

However, the instant decision of the district court, affirmed by the Court of Appeals for the Fifth Circuit, has, in effect, held that persons who are not within the

jurisdiction of the state of Louisiana may sue to redress rights under the 14th Amendment. As the argument below will indicate, the plaintiffs in the instant suit were not "within the jursdiction" of the State of Louisiana or of Bossier Parish.

It is conceded that the plaintiffs were residents of Barksdale Air Force Base (Record page 43, 44). Article I Section 8, Clause 17 of the United States Constitution grants the United States exclusive jurisdiction over federal lands within a state. It provides:

> "The Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever . . . over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings . . . ."

In *Humble Pipe Line Company v. Waggoner*, 376 U. S. 369, 1 L. Ed. 2d 782, the Supreme Court of the United States had occasion to determine the status of Barksdale Air Force Base with respect to the above quoted constitutional provisions. This court squarely held that the United States exercises exclusive jurisdiction of the base and, accordingly, held that the state was precluded from levying ad valorem taxes on the base.

It is settled jurisprudence in this country that nonresidents of a school district do not have a right to public education in the schools of that district and to the extent that such education is afforded, such privilege is revocable and subject to such terms and conditions as the school dis-

trict may deem proper. See, for example, 79 C. J. S. Section 449 B, page 357, et seq., verbo "Schools and School Districts", and 47 Am. Jur. verbo "Schools", Section 151, page 406 B. In *Logan City School District v. Kowallis*, 77 Pac. 2d 348 (Supreme Court Utah 1938) the Court stated that when a non-resident child seeks admission to public schools he must abide by any conditions stipulated by the school district for his admittance. The Court said (77 Pac. 2d at 354):

> "... They (the School District) ... can ... prescribe the conditions upon which such non-resident children will be received. When thereafter such child enters, it is upon an implied contract, at least, that he will comply with such conditions as they had fixed for his admission. Under the conditions above indicated, he was admitted, not upon any basis of legal right to attend, but upon a contractual basis, and he cannot continue to receive the emoluments of the contract while repudiating its obligations ...."

See also *Palmer v. District Trustees of District No. 21*, 289 SW 344 (Texas Appellate 1956).

In other cases, the courts have squarely held that persons residing on property subject to exclusive federal jurisdiction under Article I, Section 8, Clause 17 of the U. S. Constitution, are not entitled, of right, to free public education. See *State ex rel v. Board of Education of Euclid City*, 57 NE 2nd 118 (Ohio Appellate 1944); *Schwartz v. O'Hara Township School District*, 375 Pa. 440, 100 A. 2d 621 (1953); *School District No. 20 v. Steele*, 46 S. D. 589, 195 NW 448; and *Rockwell v. Independent School District*, 48 S. D. 137, 202 NW 478 (1925).

The Constitution contemplates a dual citizenship, and United States citizenship does not automatically entitle a person to all the privileges of state citizenship. See, for example, the Slaughter House cases, 16 Wall. 36, 21 L. Ed. 394 (1873). In recognition of this dual citizenship, the Supreme Court of the United States has held that the 14th Amendment does not prevent the state from preferring its own citizens to the citizens of other states; this principal was recognized early in the jurisprudential history of this amendment. In *McCready v. Virginia*, 94 U. S. 391, 24 S. Ct. 248, the court held that a state could validly grant its own citizens the exclusive use of lands covered by water, for raising oysters, and could prohibit under penalty, their use for such purposes by citizens of other states. Similarly, in *Missouri ex rel Gaines v. Canada*, 305 U. S. 337, 59 S. Ct. 332, 83 L. Ed. 208 (1938), the Supreme Court recognized that the obligation of the state under the 14th Amendment is to accord equal treatment to those *within its borders*. Thus:

> "The equal protection of the laws is 'a pledge of the protection of equal laws.' *Yick Woe v. Hopkins*, 118 U. S. 356, 369. Manifestly, the obligation of the state to give the protection of equal laws can be performed only where its laws operate, this is, within its own jurisdiction. . . . ."

See also 12 Am. Jur. verbo "Constitutional Law", Section 475, page 139, wherein it is stated:

> "The Supreme Court has pointed out . . . that the prohibition of the equal protection clause manifestly relates only to the denial by the state of equal protection to persons 'within its jurisdiction' * * *"

The question at issue in this case is not whether Bossier Parish maintains a segregated school system, nor whether the integretion of a segregated school system is required under the circumstances set forth in the *Brown* case in its progeny. The question here at issue is whether or not *these particular plaintiffs*, being non-residents of Bossier Parish, and residing on a federal facility subject to the exclusive jurisdiction of the federal government can maintain this suit. The *Brown* case *has not* obviated the constitutional principal that only a proper party at interest may invoke the provisions of the 14th Amendment with regard to school segregation. (See *U. S. v. Bossier Parish School Board*, 220 F. Supp. 245, affirmed 336 F. 2d 197, certiorari denied.) Manifestly, since these plaintiffs themselves have no enforceable rights with regard to schools in Bossier Parish, they may not champion the rights of others who may have such rights; that is, they may not bring a class action on behalf of a class of which they themselves are not members. See Rule 23 A (3), Federal Rules of Civil Procedure, and *Moore, Federal Procedure*, Volume 3, Section 23.04, page 3418.

B.

In granting plaintiff's motion for summary judgment, the Court below relied principally upon the evidence, established by way of affidavit, that the defendant School Board received from the United States for school construction under 20 USCA 631-645 more than $1,860,000 between 1951 and 1964, (Record 204). Although the Court noted that none of these funds had been received subsequent to the effective date of the Civil Rights Act, the

Court found that in accepting these funds the defendant School Board had signed several "assurances" which provided substantially as follows:

> "4. The applicant's (School Board's) school facilities will be available to the children for whose education contributions are provided in public law 815, as amended, on the same terms, in accordance with the laws of the state in which applicant is situated, as they are available to other children in applicant's school district." (Record p. 105).

On the basis of receipt of these funds and the signing of these assurances, the Court concluded that defendants contracted to afford free public schooling to these federal children and, accordingly, that these federal children were third party beneficiaries of this contract with standing to enforce its provisions."

We submit that the signing of this "assurance" by the Bossier Parish School Board did not grant to the federal government legally enforceable contractual rights. The Court of Appeals for the Fifth Circuit in *U. S. v. Madison County Board of Education*, 326 F. 2d 237 (1964), ruled specifically on this point. There, the government sought to enforce by specific performance the alleged contract which resulted from the signing of the "assurance" required as a prerequisite to receipt by local school boards of federal school construction funds. The court rejected the government's position in that case for two reasons; first, because the local education agency would never have knowingly contracted with the federal government to provide for integrated education, and; second, because the statute pursuant

to which the "assurance" was signed provided no judicial remedy for its enforcement. The court noted that the statute (20 U. S. C. A. 641 et seq) provided for specific administrative remedies with regard to withholding of payments for non-compliance and stated that (326 F. 2d at 241, et seq):

> "The long established principal is applicable that: 'a general liability created by statute without a remedy may be enforced by an appropriate common law action. But where the provision for the liability is coupled with a provision for a special remedy, that remedy, and that alone, must be employed.' *Pollard v. Bailey*, 1874, 87 U. S. (20 Wall.) 520, 527, 22 L. Ed. 376. The United States complained that the statutory remedy is wholly inadequate. That, however, is a matter appropriate for the consideration of Congress, especially in view of its obvious desire not to interfere with local control of the operation of the public schools, and of familiar legislative history that any such attempted control would prevent enactment of the statute, or if enacted, acceptance of the profered aid by many of the local school boards where the greatest need might exist."

Since no enforceable contract existed between the federal government and the Bossier Parish School Board, the plaintiffs as alleged third party beneficiaries of this contract, would likewise have no enforceable rights against the Bossier Parish School Board. Thus, in Volume 71 A, C. J. S. verbo "Contracts", Section 519 (4) (b), page 989, it is stated that:

"The rights of a third person to enforce a contract made for his benefit depends upon its terms, and are no greater than if it were being enforced between the original parties; he is in no better position than the contracting party with whom he claims.

* * *

"Since recovery on a third person beneficiary contract is a recovery on the contract itself, the right of a beneficiary is no greater than if the contract were endorsed between the nominal parties, the beneficiary being in no better position, and having no greater rights, than the contracting party through whom he claims."

C.

The District Court and the Court of Appeals in the instant case also erred in holding that plaintiffs and government had obtained enforceable rights to public education in Bossier Parish by reason of the receipt by the School Board of federal maintenance and operation funds (pursuant to 20 U. S. C. A. 236-244) subsequent to the effective date of the Civil Rights Act of 1964, inasmuch as no "assurances" of any kind were required in connection with the payment of these funds. The legislative history and purpose of Section 236 of Title 20 of the United States Code providing for maintenance and operating funds for public schools is set forth in *U. S. v. Madison County Board of Education*, 326 F. 2d 237 (1964), supra, in which it is pointed out that funds received under this section involve no federal control or obligation to the federal government. The trial court in the instant case, while recognizing this

original purpose of these statutes, reasoned that this purpose was changed by Section 601 of the Civil Rights Act of 1964 (42 U. S. C., Section 2000 (d)) which provides:

> "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Based upon this section, the trial court and Court of Appeals reasoned that, "When defendants received and accepted federal funds for maintenance and operations of their schools under 20 U. S. C. A., Section 236-244, after the passage of the Civil Rights Act of 1964, they became bound by Section 601 and are now *obligated* to provide the education for which the payments were received, without racial discrimination." (Record, page 110, Court of Appeals decision appendix A. page 37 infra).

Section 602 of the Civil Rights Act (42 U. S. C. 2000 (d-1) demonstrates that the purpose of Title V of the Civil Rights Act relating to federally assisted programs was not intended to grant blanket authority to the government or to negro plaintiffs to invoke judicial relief in the event of discrimination in a federally assisted program; rather, this section provides administrative procedures to effectuate the policy as set forth in Section 601. The administrative machinery provided in Section 602 does not grant the government or negro plaintiffs a judicial remedy but provides a less harsh but nonetheless effective remedy of making the continued receipt of federal funds conditioned upon the signing of compliance agreements.

The legislative history of the Civil Rights Act as set forth in 1964 U. S. Code Congressional & Administrative News, Volume II, page 2355, et seq., strongly supports this conclusion. There, it is pointed out that in one point of the committee hearings in the House, a draft was suggested giving administrators of financial assistance programs rule making authority and then authorizing the enforcement of such regulations against discrimination by injunctive processes; however, the compromised version reported by the full judiciary committee struck the "government by injunction" remedy (see Volume 2, 1964 U. S. Code of Congressional & Administrative News at page 2425).

D.

Clearly, the questions presented are of great importance.

Billions of dollars are dispensed by Congress in various forms of federal aid to public schools. Much of this money is granted under the terms of "compliance" agreements but much of it is granted without such agreements. It is important to the recipients and future recipients of such funds to know the limits and extent of their obligation to the government with respect to the Civil Rights Act. The questions involved in this respect should be settled by this court.

With respect to the enforcement of 14th Amendment Rights by non-residents, as in the instant case, this decision is a clear departure from the settled law. The Supreme Court should pass on these questions.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

MAY ....., 1967.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General, State of Louisiana

WILLIAM P. SCHULER
Assistant Attorney General,
State of Louisiana

LOUIS H. PADGETT, JR.
District Attorney, Bossier
Parish, Louisiana

J. BENNETT JOHNSTON, JR.
Special Counsel

By: _____
of counsel

CERTIFICATE

I CERTIFY that a copy of the above petition has been mailed to the following attorneys:

Jesse N. Stone, Jr.
854½ Texas
Shreveport, Louisiana

Norman C. Amaker,
Jack Greenberg and John Walker
10 Columbus Circle
New York, N. Y.

St. John Barrett
Department of Justice
Washington, D. C.

Edward L. Shaheen
U. S. Attorney
407 Federal Building
Shreveport, Louisiana.

MAY ....., 1967

_____
Of Counsel

APPENDIX A

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

CIVIL ACTION

NO. 10,687

URA BERNARD LEMON, SANDRA LEMON, BRENDA LEMON, WILLIAM H. LEMON, JR., TONY LEMON, Infants, by their parents and next friends, William H. Lemon and Mrs. Nettie J. Lemon, et al.,

vs.

THE BOSSIER PARISH SCHOOL BOARD and EMMETT COPE, Superintendent of Schools.

THE UNITED STATES OF AMERICA, Intervenor.

FOR PLANTIFFS

MESSRS.
Jesse N. Stone, Jr.,
854 ½ Texas Avenue,
Shreveport, Louisiana 71101

Norman C. Amaker,
Jack Greenberg, and
John Walker,
10 Columbus Circle,
New York, New York 10019

FOR DEFENDANTS

J. Bennett Johnston, Jr.,
Johnston and Johnston,
930 Giddens-Lane Building,
Shreveport, Louisiana 71101.

Louis H. Padgett, Jr.,
District Attorney for the
26th Judicial District,
Bossier Bank Building
Bossier City, Louisiana.

Jack P. F. Gremillion,
Attorney General of the
State of Louisiana,
State Capitol Building,
Baton Rouge, Louisiana.

William P. Schuler,
Assistant Attorney General
of the State of Louisiana
State Capitol Building,
Baton Rouge, Louisiana

FOR INTERVENOR

Nicholas de B. Katzenbach,
Attorney General;

Burke Marshall,
Assistant Attorney General;

St. John Barrett,
Attorney,
United States Department of
Justice,
Washington, D. C. 20530

Edward L. Shaheen,
United States Attorney;

Edward V. Boagni,
Assistant United States
Attorney,
Shreveport, Louisiana 71102.

BEN C. DAWKINS, JR., CHIEF JUDGE.

OPINION ON MOTIONS FOR PRELIMINARY INJUNCTION, SUMMARY JUDGMENT, TO DISMISS FOR FAILURE TO STATE A CLAIM, AND MOTION TO PERMIT INTERVENTION BY THE GOVERNMENT

Here the parents of eight Negro children, suing on behalf of these children and others similarly situated, seek a prohibitory injunction restraining the Bossier Parish School Board and its Superintendent, Emmett Cope, from: (1) denying minor plaintiffs admittance to white schools; (2) operating a bi-racial school system and assigning students to schools with regard to race; (3) maintaining dual school zones or attendance area lines based on race or color; (4) employing teachers and other school personnel on the basis of their race or color; (5) approving budgets, policies and construction programs in the furtherance of a bi-racial school system. They pray that this relief be granted in its entirety by the end of the 1965-66 school year.

No dispute exists as to the facts, purely legal questions being presented.

The Government seeks to intervene in the action under the authority of Section 902 of the Civil Rights Act of 1964 (42 U. S. C.A. § 2000h-2). [1] Following a hearing

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[1] 42 U. S. C. A. § 2000h-2: "Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action."

upon the motions to intervene and for preliminary injunction plaintiffs moved for a summary judgment, and defendants moved to dismiss for failure to state a claim, Arguments were heard on all motions.

Plaintiffs are Negro children of persons in military service stationed at Barksdale Air Force Base, a United States defense establishment situated within Bossier Parish, Louisiana, and all reside on the base. It is agreed that all the children have been considered eligible to attend Bossier Parish public schools, and all presently are attending all-Negro schools in that Parish. They allege that they have been denied admittance to white schools after due application made, although there are white schools nearer to their residence than the schools they presently attend. They allege their applications were denied solely because of their race and the policy, custom and practice of defendants in maintaining segregated schools.

Primarily, defendants' motion to dismiss is based upon the contention that plaintiffs have no standing to sue due to their lack of residence in Bossier Parish. In a well written brief counsel for the defendants point out that the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.) As bedrock for their argument defendants rely on Humble Pipe Line Co. v. Waggonner, 376 U. S. 369 (1964) in which the Supreme Court held that the United States acquired and exercises exclusive jurisdiction over Barksdale Air Force Base.

They thus urge that since plaintiffs reside on Barksdale under the exclusive jurisdiction of the United States, they are not "within the jurisdiction" of Bossier Parish; hence that they do not fall within the ambit of the Fourteenth Amendment's equal protection clause. They further contend that due to their lack of residence in Bos-

sier Parish plaintiffs have no right to attend Bossier schools. They claim that plaintiffs are merely permitted to attend schools in Bossier and that such permission may be withdrawn at any time. (2) They argue that since plaintiffs claim to represent a class of persons made up of all Negroes who reside in Bossier Parish and who are qualified or eligible to attend Bossier public schools, plaintiffs cannot maintain this class action because they do not reside in Bossier Parish and thus are not members of the class they purport and seek to represent.

Plaintiffs rely on Randall v. Sumter School District Number 2, Sumter, South Carolina, 232 F. Supp. 786 (E. D. S. C. 1964). There the Court permitted minor plaintiffs, all of whom resided on Shaw Air Force Base, to maintain a suit to desegregate the public schools of Sumter County. Randall involved facts identical to those presented here, except that the issue presently raised by defendants apparently was not raised in that case.

Defendants contend that Randall differs from the present case since there the county had agreed by contract with the United States to provide public school education for the "federal children." See United States v. Sumter County School District No. 2, 232 F. Supp. 945 (E.D. S.C. 1964).

After oral arguments here plaintiffs submitted requests for defendants to admit the existence of a contract between the Bossier Parish School Board and the United States by which the school board agreed to furnish education to federal children. Plaintiffs also asked that defend-

(2) Defendants contend that federal children attend Bossier Parish schools by license rather than by right. For a case holding to the contrary, see United States v. Sumter County School District No. 2, 232 F. Supp. 945 (E.D. S.C. 1964).

ants admit the payments of funds under such contract. Defendants denied the existence of any such contract and denied that any funds received by them from the United States were received thereunder.

The Government has filed the affidavit of the Assistant Commissioner and Director, Division of School Assistance, Office of Education, of the Department of Health, Education and Welfare, who is custodian of the official records showing payments made to defendants under 20 U. S. C. A. §§ 236-244 and 20 U. S. C. A. §§ 631-634. This affidavit shows that defendants received from the United States for school construction under 20 U. S. C. A. ss 631-645 more than $1,860,000 between 1951 and 1964. No funds have been received under the latter sections since March 10, 1964.

It is to be pointedly noted, however, that some of these funds were expended upon construction of the school attended by six of the eight minor plaintiffs at the present time, and some of the funds were expended upon construction of the schools to which admittance is sought by seven of the eight plaintiffs, since these schools are nearer to their homes than the all-Negro schools they now attend.

In accordance with 20 U. S. C. A. § 636 the applications for these construction funds contained several "assurances," among which was an assurance substantially the same as the following set forth in the application for the last construction funds received by the board: [3]

> "4. The Applicant's (School Board's) school facilities will be available to the children for whose education contributions are provided in Public Law

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[3] The last application under which construction funds were received by the board was dated March 12, 1962, and was approved May 24, 1962. The last funds received under this application were received March 10, 1964.

> 815, as amended, on the same terms, in accordance with the laws of the State in which Applicant is situated, as they are available to other children in Applicant's school district (.)" (Emphasis added.)

Both this Court, and the Court of Appeals for the Fifth Circuit, have recognized that by this provision defendants did not contract intentionally to provide desegregated schools for federal children. See United States v. Bossier Parish School Board, 220 F. Supp. 243 (W.D. La. 1963), aff'd per curiam 336 F. 2d 197 (5 Cir. 1964); United States v. Madison County Board of Education, 326 F. 2d 237 (5 Cir. 1964). Nonetheless, these assurrances do constitute a contractual agreement by defendants to provide education for federal children on the same terms as they provide education to other children in the school district, in accordance with the laws of the State.

All Louisiana laws providing for segregation in public schools were declared unconstitutional in Orleans Parish School Board v. Bush, 242 F. 2d 156 (5 Cir. 1957) cert. denied, 354 U. S. 921 (see also Bush v. Orleans Parish School Board, 188 F. Supp. 916 (E.D. La. 1960), aff'd per curiam 365 U. S. 569). These Louisiana laws subsequently were repealed. See La. Acts 1960, 1st Ex. Sess., Nos. 3-9 and La. Acts 1962, No. 128, § 1. We find no Louisiana law presently in effect which requires the school boards of this State to maintain segregated schools.

It is not contended that defendants could defend successfully a suit by a Negro resident of Bossier Parish to desegregate these same schools, because of the Supreme Court's ruling in Brown v. Board of Education of Topeka, 347 U. S. 483 (1954) and its myriad progeny. It necessarily follows that under the laws of Louisiana, read in the light

of the United States Constitution, as interpreted by the Supreme Court, Negro residents have a right to attend desegregated public schools. Defendants by their contractual assurances have afforded rights to these federal children as third-party beneficiaries [4] concerning the availability of public schools. Such rights are identical in weight and effect to those rights possessed by children who are entitled to attend Bossier Parish schools simply because of residence instead of by contract.

Having thus obligated themselves, defendants are now estopped by their contractual agreement, and their acceptance of federal funds paid pursuant thereto, to deny that plaintiffs are entitled to the same rights to school attendance as are resident children. Resident children are entitled to the equal protection of the laws granted by the Fourteenth Amendment, which permits Negro children to bring suits demanding desegregation of public schools. By their contract defendants are estopped to deny that federal children are in the class of persons entitled to bring such suits for the desegregation of schools in Bossier Parish. Plaintiffs are entitled to bring this suit on behalf of the class consisting of all Negro children eligible to attend Bossier Parish Schools, whether because of residence or contract. Plaintiffs' lack of residence in Bossier Parish, then, does not prevent their representing the class in this suit.

Defendants show by affidavit of the Superintendent of Schools for Bossier Parish that no funds have been received for construction under 20 U. S. C. A. § 631 et seq. since the passage of the Civil Rights Act of 1964 and that

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[4] See La. Civil Code Arts. 1890, 1902 (1950); 17A C. J. S. Contracts § 519 (3), 519 (4). When plaintiffs and the other federal children began attending Bossier Parish schools, they accepted the benefits of the cantract, and thus are entitled to bring suit to enforce the contract.

all funds received for maintenance and operation of the schools under 20 U. S. C. A. § 236 et seq. were received without the signing of any contract or assurances and were on a "no strings attached" basis. The school board received from the Government a payment of $446,338.00 on November 9, 1964, under this latter section for maintenance and operation of its schools during the 1964-1965 school year. The board also received a similar payment of $157,302.00 November 13, 1964, as the last payment for the operation and maintenance of its schools during the 1963-64 school year. Both of these payments were accepted by the board without reservation.

It is true that no specific assurances were given by the board in return for payment of these maintenance and operation funds. However, the assurances given by the board when it received the construction funds under 20 U. S. C. A. § 631 et seq. still are binding upon it. The schools built with these funds still are in use, and some of them now are being attended by plaintiffs. These contractual assurances will continue to be binding on the board at least as long as it continues to use the facilities constructed with the funds for which the assurances were given.

We must further find that the board's acceptance of funds for maintenance and operation of schools during the 1964-65 school year shows that defendants intended to abide by that contract by continuing to provide education for federal children. This acceptance constituted a further ratification of the contract by which defendants agreed to provide such education, and, therefore, it acted as a ratification of the assurances given when the construction funds were received.

This holding is not inconsistent with our decision in United States v. Bossier Parish School Board, supra, and the decision of the Fifth Circuit in United States v. Madi-

son County Board of Education, supra. Those decisions did not hold that no contract existed between the Government and the school boards involved. They were concerned with whether the Attorney General was authorized to bring suit demanding desegregation of schools, if a contract was found to exist. Neither case dealt with the right of individuals to bring suits seeking desegration of public schools.

Those decisions were based on two grounds: (1) that Congress had done nothing at that time to negative its original intention to provide funds without disturbing racial classifications in local school districts; and (2) that Congress expressly had not authorized the Attorney General to bring suits to desegregate schools under the contracts, but had provided an administrative remedy instead. See 20 U. S. C. A. § 642 (b).

Both bases for these decisions were changed by the Civil Rights Act of 1964. By Section 601 of the Act [5] Congress expressly prohibited racial discrimination in any program receiving federal financial assistance, thus negating its original intention to provide funds without disturbing racial classifications. When defendants received and accepted federal funds for maintenance and operation of their schools under 20 U. S. C. A. §§236-244 after the passage of the Civil Rights Act of 1964, [6] they became bound by Section 601 and now are obligated to provide the education for which the payments were received, without

[5] 42 U. S. C. A. § 200d: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

[6] The effective date of the Civil Rights Act of 1964 was July 2, 1964, before the commencement of the 1964-65 school year.

racial discrimination. Plaintiffs, as pupils attending schools operated and maintained by these funds, are recipients of the rights conferred by Section 601, and as such are entitled to bring this suit. Section 601 gives plaintiffs standing to maintain this action as representatives of the class comprised of all children attending schools maintained and operated with federal financial assistance.

Consequently, plaintiffs are entitled to bring this class action either under Section 601 of the Civil Rights Act of 1964 or under the contractual assurances by which defendants are estopped to deny them the same rights to attend desegregated schools as are possessed by children of Negro residents of Bossier Parish.

The 1964 Civil Rights Act also expressly authorized the Attorney General to bring suits to desegregate schools. Section 407 [7] of the Act authorizes the Attorney General to bring such suits when he has received a complaint that the school board is depriving children of the equal protection of the laws. He also must certify that the signers of the complaint are unable to maintain legal proceedings for relief, and he must give notice and a reasonable period for adjustment.

Section 902 of the Act [8] permits the Attorney General to intervene in actions brought in Federal Courts seeking relief from a denial of equal protection of the laws. It further provides that "(i)n such action the United States shall be entitled to the same relief as if it had instituted the action." It is under this section that the Government seeks to intervene here.

Defendants contend that before the Attorney General may intervene under Section 902 he must comply with

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[7] 42 U. S. C. A. § 2000c-6.

[8] 42 U.S. C. A. § 2000h-2.

the requirements of Section 407. No such interpretation is indicated by the language of the Act, and we think none was intended. Section 902 merely requires the Attorney General to certify that the case is of public importance, which he has done in this case. The obvious intent of Congress was to permit interventions by the Attorney General in cases of this kind, and for this reason the Government's motion to intervene must be granted.

Able counsel for defendants has cited several authorities concerning the lack of a duty on the part of a state to furnish access to public schools to non-residents, but we do not think these authorities aid in disposition of this case, for two reasons. First the cases and treatises relied on came well before the Supreme Court decision in Brown v. Board of Education of Topeka, supra, held racial discrimination in public schools to be unconstitutional. Second, the cited authorities do not deal with situations in which the local school board contracted to provide education to non-residents on the same basis as it is provided to residents.

For the foregoing reasons defendants' motion to dismiss is denied, and plaintiffs' motion for summary judgment is granted. The Government's motions to intervene and for summary judgment also are granted. Plaintiffs and intervenor are entitled to an injunction against defendants in accordance with the attached order.

THUS DONE AND SIGNED, in Chambers, at Shreveport, Louisiana, on this the 13th day of April, 1965.

/s/ Ben C. Dawkins, Jr.
CHIEF JUDGE

Filed April 13, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of
Louisiana

—oOo—

(Title Omitted)

No. 10687

DECREE

Pursuant to the findings of fact and conclusions of law contained in the opinion rendered this date:

1. IT IS ORDERED, ADJUDGED AND DECREED that the Bossier Parish School Board, its Superintendent, Emmett Cope, their agents, employees, attorneys, successors in office and all those acting in concert with them are hereby permanently enjoined and restrained from:

a. Continuing to refuse to admit minor plain- to the schools which they would attend if they were white;

b. Continuing to assign students to schools with regard to race or color;

c. Continuing to operate a compulsory biracial school system in Bossier Parish, Louisiana;

d. Continuing to maintain dual school zone or attendance area lines based on race or color;

e. Continuing to approve budgets, construction programs, policies, curricula and programs designed to perpetuate, maintain or support a school system operated on a racially segregated basis.

2. It is further ORDERED that, since primary responsibility therefore rests with defendants, they shall prepare and submit to the Court a plan for the desegregation of Bossier Parish schools in accordance with para-

graph 1 of this Order beginning with the 1965-1966 school year. This plan shall provide that desegregation will progress with all deliberate speed until all grades in all schools are included. The speed and manner as to which the schools are desegrated shall be in accordance with the requirements set forth by the Fifth Circuit Court of Appeals in the following cases: Davis v. Board of School Commissioners of Mobile County, Alabama, 318 F. 2d 63 (5 Cir. 1963); Armstrong v. Board of Education of the City of Birmingham, Jefferson County, Alabama, 333 F. 2d 47 (5 Cir. 1964); Davis v. Board of School Commissioners of Mobile County, Alabama, 333 F. 2d 53 (5 Cir. 1964); Stell v. Savannah-Chatham County Board of Education, 333 F. 2d 55 (5 Cir. 1964); Gaines v. Dougherty County Board of Education, 334 F. 2d 983 (5 Cir. 1964); Lockett v. Board of Education of Muscogee County School District, Georgia, ... F. 2d ..... (5 Cir. 1965).

3. Defendants may submit one or more alternate plans and may designate the order of preference assigned by them to the plan or plans. All must be submitted within 30 days, after which counsel for plaintiffs will have 15

4. The question of desegregation of teaching and administrative personnel in the Bossier Parish schools will be deferred until the plan for desegregation of pupils, as finally approved, either has been accomplished or has made substantial progress. Augustus v. Board of Public Instruction of Escambia County, Florida, 306 F. 2d 862 (5 Cir. 1962); Calhoun v. Latimer, 321 F. 2d 302 (5 Cir. 1963); and Lockett v. Board of Education of Muscogee County School District, Georgia, ... F. 2d ..... (5 Cir. 1965).

5. Jurisdiction of this cause is retained for such further orders as may be necessary, just and proper.

THUS DONE AND SIGNED in Chambers, at Shreveport, Louisiana, this 13th day of April, 1965.

/s/ Ben C. Dawkins, Jr.
CHIEF JUDGE

Filed April 13, 1965 —
Alton L. Curtis, Clerk
U. S. District Court
Western District of
Louisiana

(Title Omitted)

No. 10687

RULING UPON MOTIONS FOR A REHEARING AND TO DISMISS FOR FAILURE TO JOIN AN INDISPENSABLE PARTY

Defendants have moved for a rehearing herein, based upon Article 12, Section 11 of the Louisiana Constitution of 1921, which reads:

> "Municipal or parish school boards and systems now in existence by virtue of special or local legislative acts are hereby recognized, subject to control by and supervision of the State Board of Education, and the power of the Legislature to further control them by special laws."

It is argued from this provision that the State Board of Education was an indispensable party defendant in this proceeding; hence that it should be joined before a valid judgment might be rendered. We do not agree.

In the first place, it is so fundamental as to require no citation of authority that Constitutional provisions and statutes in pari materia should be read together, and all sections accorded equal dignity in interpreting their meaning. Wherever possible, all provisions should be given effect, and each interpreted in light of the others, so as to reconcile them, if possible, and to render none nugatory. Particular provisions shall prevail over those of a general nature.

With these principles in mind, we note that Article 12, Section 4 of the Louisiana Constitution provides in pertinent part:

"The Legislature shall prescribe the duties of said (State) Board (of Education) and define its powers; provided, that said Board shall not control the business affairs of Parish School Boards, . . ." etc. (Emphasis added.)

Giving full effect to both Section 11 and Section 4, it is obvious that the latter controls here and that with respect to the matter of desegregation of its schools, this forms a part of the "business affairs" of the Bossier Parish School Board, not subject to control or supervision by the State Board. Moreover, whereas Article 12, Section 1 of the Louisiana Constitution formerly required both the State and local boards to maintain segregated schools, this provision was repealed by Act No. 546 of 1962, a constitutional amendment which was duly ratified and adopted by the people of this State on November 6, 1962; and, as noted in our original opinion, all legislative Acts requiring segregation also have been repealed. Consequently, and since operation of segregated schools in Louisiana has been declared to be unconstitutional, Orleans Parish School Board v. Bush, 242 F. 2d 156 (5 Cir 1957) cert. denied, 354 U. S. 921 (see also Bush v. Orleans Parish School Board, 188 F. Supp. 916 (E. D. La. 1960), aff'd. per curiam 365 U. S. 569), the State Board here would have no authority whatever to require the Bossier Parish Board to maintain segregation in its schools. In addition, we note that La. R. S. 17:81 vests local school boards with particular authority to manage their own affairs, unfettered by the general provisions of Constitutional Article 12, Section 11.

Finally, except for the delay involved, the presence of the presence of the State Board as a party defendant here would have made no difference in the applicable law or the decision we have reached.

For these reasons, therefore, the motion for a rehearing, and its appendant motion to dismiss for failure to join an indispensable party, are hereby denied.

THUS DONE AND SIGNED, in Chambers, at Shreveport, Louisiana, this 28 day of April, 1965.

/s/ Ben C. Dawkins, Jr.
CHIEF JUDGE

Filed April 28, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of
Louisiana

—oOo—

IN THE

UNITED STATES DISTRICT COURT

FOR THE FIFTH CIRCUT

No. 22675

BOSSIER PARISH SCHOOL BOARD, ET AL,
Appellants,

versus

URA BERNARD LEMON, ET AL,
Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

(January 5, 1967.)

Before BROWN, BURGER,* and WISDOM, CIRCUIT Judges.

WISDOM, Circuit Judge: This Court has had to deal with a variety of reasons that school boards have managed to dredge up to rationalize their denial of the constitutional right of Negro school children to equal educational opportunities with white children. This case presents a new and bizarre excuse. Here the alleged reason for the admitted discrimination is that the Negro children are "federal children"; they are children of parents in uniform who are stationed at Barksdale Air Force Base.

* Of the District of Columbia Circuit, sitting by designation.

Barksdale is a United States defense base in Bossier Parish — a federal enclave. The hair-splitting argument the Board has to live with is that the Forteenth Amendment provides that no state shall "deny to any person *within its jurisdiction* the equal protection of the laws" (emphasis added); since the children live at Barksdale, they are not persons within the jurisdiction of the state. As a corollary, Negro children of fathers stationed at Barksdale have no right to attend Bossier schools; they are merely permitted to attend schools (Negro schools) by sufferance, permission that may be withdrawn at any time. The Board contends also that since the plaintiffs do not reside in Bossier Parish, that they cannot file a class action representing all Negroes who reside in Bossier Parish.

The district court denied the defendant's motion to dismiss. The court granted the plaintiff's motion for a summary judgment and issued an injunction ordering the school authorities to submit a desegregation plan for Bossier public schools. We affirm.

I.

The district court found that the United States Department of Health, Education and Welfare provided financial aid to the Bossier Parish school system to the amount of nearly two million dollars between 1951 and 1964 under the provisions of 20 U. S. C. 631-45. In return the school board gave various "assurances" to the United States that children of personnel stationed at Barksdale would be admitted to the schools "on the same terms, *in accordance with the laws of the State* in which the school district of such agency is situated, as they are available to other children in such school district. . . ." (Emphasis added.) 20 U. S. C. § 636(b) (1) (F). The court found also that subsequent to the passage of the Civil Rights Act of 1964, the school board accepted payments from the

United States amounting to half a million dollars for operation of its schools during the year 1964-65.

The able trial judge, in an opinion we adopt as part of the opinion of this Court, held that the plaintiffs have standing to sue:

> "[Although] these assurances do constitute a contractual agreement . . . [a]ll Louisiana laws providing for desegregation in public schools were declared unconstitutional in Orleans Parish School Board v. Bush, 5 Cir. 1957, 242 F.2d 156 cert. denied, 354 U. S. 921 (see also Bush v. Orleans Parish School Board, E.D.La. 1960, 188 F. Supp. 916, aff'd per curiam 365 U.S. 569). These Louisiana laws subsequently were repealed. See La. Acts 1960, 1st Ex. Sess., Nos. 3—9 and La. Acts 1962, No. 128, 1. We find *no* Louisiana law presently in effect which requires the school boards of this State to maintain segregated schools. . . . Defendants by their contractual assurances have afforded rights to these federal children as third-party beneficiaries concerning the availability of public schools. Such rights are identical in weight and effect to those rights possessed by children who are entitled to attend Bossier Parish schools simply because of residence instead of by contract. ¶ Having thus obligated themselves, defendants are now estopped by their contractual agreement, and their acceptance of federal funds paid purauant thereto, to deny that plaintiffs are entitled to the same rights to school attendance as are resident children. . . . ¶ We must further find that the board's acceptance of funds for maintenance and operation of schools during the 1964-65 school year shows that defendants intended to abide by that contract by continuing to provide education for federal children. This acceptance con-

stituted a further ratification of the contract by which defendants agreed to provide such education, and, therefore, it acted as a ratification of the assurances given when the construction funds were received."

The court distinguished *United States v. Bossier Parish School Board*, W.D.La. 1963, 220 F. Supp., aff'd per curiam, 5 Cir. 1964, 336 F.2d 197 and *United States v. Madison*, 5 Cir. 1964, 326 F.2d 237 holding that the United States could not force desegregation of a school system by specifically enforcing the assurances extracted under 20 U.S.C. § 636 (h) (1) from school boards receiving federal funds:

> "*Both bases for these decisions were changed by the Civil Rights Act of 1964.* By Section 601 of that Act Congress expressly prohibited racial discrimination in any program receiving federal financial assistance, thus negating its original intention to provide funds without disturbing racial classifications. When defendants received and accepted federal funds for maintenance and operation of their schools under 20 U.S.C.A. 236-244 after the passage of the Civil Rights Act of 1964, they became bound by Section 601 and now are *obligated* to provide the education for which the payments were received, without racial discrimination. (Emphasis by the Court) . . . ¶ Consequently, plaintiffs are entitled to bring this class action either under Section 601 of the Civil Rights Act of 1964 or under the contractual assurances by which defendants are estopped to deny them the same rights to attend desegregated schools as are possessed by children of Negro residents of Bossier Parish."

II.

For good measure, we add a few observations to the district court's opinion.

A. Even if the school board were under no legal obligation to provide public education to children of military personnel on the air base, it could not provide that education subject to an unconstitutional condition. See *Hanover Ins. Co. v. Harding*, 1926, 272 U.S. 494; *Wheeling Steel Corporation v. Glander*, 1949, 337 U.S. 562. The plaintiffs here had been admitted to the school system, but had been denied the opportunity to transfer from a Negro to a white school. Once the plaintiffs had been admitted to the school system, they had a constitutional right to a desegregated education, and must obviously have standing to enforce that right — free of any unconstitutional condition precedent.

B. *United States v. Madison County Board of Education* has a narrow scope. Here the plaintiffs rely on the "assurances" only to establish their right to attend the Bossier Parish school system. They do not rely on this frail reed to establish their right to a desegregated education. To establish *that* right, they rely on the Constitution. We think it clear that once the parish has accepted funds under these federal programs, it may not then deny the plaintiffs' right to attend school. *Simkins v. Moses H. Cone Memorial Hospital*, 4 Cir. 1963, 323 F.2d 959, cert. denied 376 U.S. 938; *cf. Flagler Hospital, Inc. v. Hayling*, 5 Cir. 1965, 344 F.2d 950; *Smith v. Holiday Inns of America, Inc.* 6 Cir. 1964, 336 F.2d 630; *United States v. Sumter County School Dist. No. 2*, E.D.S.C. 1964, 232 F. Supp. 945. And once the plaintiffs have established their right to attend school in the system, their standing to assert their constitutional right to equal protection follows automatically. The key point is that here individuals are suing to enforce

a national constitutional right. In the *Madison County* case, on the other hand, the United States sued to desegregate the schools. The United States was either 1) attempting specifically to enforce the assurance demanded by 20 U. S. C. § 636(b) (1) (F), or 2) attempting to protect the constitutional rights of persons not parties to the suit. The suit was brought before Title IV of the Civil Rights Act of 1964 provided the necessary statutory foundation for the Attorney General to sue to assure individuals of the constitutional right to a desegregated education. The Court's ruling therefore was limited in scope to the proper method for the assertion of contractual, not constitutional, rights. Contract rights are not involved in this case.

C. Finally, section 601 of the Civil Rights Act of 1964 provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. § 2000d.

The defendants argue that this section is a mere statement of policy, and that section 602's administrative remedies are the only means by which it may be enforced. Section 601 states a reasonable condition that the United States may attach to any grant of financial assistance and may enforce by refusal or withdrawal of federal assistance. But it also states the law as laid down in hundreds of decisions, independent of the statute. In this sense, the section is a prohibition, not an admonition. In the absence of a procedure through which the individuals protected by section 601's prohibition may assert their rights under it, violations of the law are cognizable by the courts. See *Texas & Pacific Ry. v. Rigsby*, 1916, 241 U.S. 33; *Steele*

v. Louisville & N.R.R., 1944, 323 U.S. 192. The Bossier Parish School Board accepted federal financial assistance in November 1964, and thereby brought its school system within the class of programs subject to the section 601 prohibition against discrimination. The Negro school children, as beneficiaries of the Act, have standing to assert their section 601 rights.

For the reasons given by the district court and for additional reasons, any one of which is sufficient to dispose of the Board's opera bouffe motion, we hold that these plaintiffs have standing to assert their right to equal educational opportunities with white children. "Negro children in the public schools have a constitutional right to have a public school system administered free . . . segregation." *Bush v. Orleans School Board*, 5 Cir. 1962, 308 F.2d 481,499.

The judgment of the district court is AFFIRMED.

APPENDIX B

STATUTES INVOLVED

1. United States Constitution Article I, Section 8, Clause 17:

> "The Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever . . . over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings . . ."

2. United States Constitution, Amendment XIV, Section 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. Civil Rights Act of 1964, Section 601 (42 U.S.C. 2000d):

> "§ 2000d.
> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or acti-

vity receiving Federal financial assistance. Pub.L. 88-352, Title VI, § 601, July 2, 1964, 78 Stat. 252."

4. Civil Rights Act of 1964, Section 602 (42 U.S.C. 2000d-1):

"Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the require-

ment and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report. Pub.L. 88-352, Title VI, §602, July 2, 1964, 78 Stat. 252."

5. 20 U.S.C. 236-245

§ 236. Congressional declaration of policy

In recognition of the responsibility of the United States for the impact which certain Federal activities have on the local educational agencies in the areas in which such activities are carried on, the Congress declares it to be the policy of the United States to provide financial assistance (as set forth in this chapter) for those local educational agencies upon which the United States has placed financial burdens by reason of the fact that—

(1) the revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or

(2) such agencies provide education for children residing on Federal property; or

(3) such agencies provide education for children whose parents are employed on Federal property; or

(4) there has been a sudden and substantial increase in school attendance as the result of Federal activities. Sept. 30, 1950, c. 1124, § 1, 64 Stat. 1100.

§ 237. Federal acquisition of property within school district as financial burden; Federal contributions; definitions; effect of school district consolidations

(a) Where the Commissioner, after consultation with any local educational agency and with the appropriate State educational agency, determines for any fiscal year ending prior to July 1, 1963 —

(1) that the United States owns Federal property in the district of such local educational agency, and that such property (A) has been acquired by the United States since 1938, (B) was not acquired by exchange for other Federal property in the school district which the United States owned before 1939, and (C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 per centum or more of the assessed value of all real property in the school district (similarly determined as of the time or times when such Federal property was so acquired); and

(2) that such acquisition has placed a substantial and continuing financial burden on such agency; and

(3) that agency is not being substantially compensated for the loss in revenue resulting from such acquisition by (A) other Federal payments with respect to the property so acquired, or (B) increases in revenue accruing to the agency from the carrying on of Federal activities with respect to the property

so acquired, then the local educational agency shall be entitled to receive for such fiscal year such amount as, in the judgment of the Commissioner is equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditures placed on such agency by such acquisition of property, to the extent such agency is not compensated for such burden by other Federal payments with respect to the property so acquired. Such amount shall not exceed the amount which, in the judgment of the Commissioner, such agency would have derived in such year, and would have had available for current expenditures, from the property acquired by the United States (such amount to be determined without regard to any improvements or other changes made in or on such property since such acquisition), minus the amount which in his judgment the local educational agency derived from other Federal payments with respect to the property so acquired and had available in such year for current expenditures.

(b) For the purposes of this section—

(1) The term "other Federal payments" means payments in lieu of taxes, and any other payments, made with respect to Federal property pursuant to any law of the United States other than this chapter, and property taxes paid with respect to Federal property, whether or not such taxes are paid by the United States, but shall not include payments pursuant to contract or other arrangement under section 452 of Title 25.

(2) Any real property with respect to which payments are being made under section 831*l* of Title 16 shall not be regarded as Federal property.

(c) Where the school district of any local educational agency shall have been formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at the times it files application under section 240 of this title) for any fiscal year to have (1) the eligibility of such local educational agency, and (2) the amount which such agency shall be entitled to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school district as the agency shall designate in such election. Sept. 30, 1950. c. 1124, § 2, 64 Stat. 1101; Aug. 8, 1953, c. 402, § 1, 67 Stat. 530; Aug. 12, 1955, c. 868 § 1, 69 Stat. 713; Aug. 3, 1956, c. 915, Title II, § 201, 70 Stat. 970; Aug. 12, 1958, Pub.L. 85-620, Title II, § 201, 72 Stat. 559; Oct. 3, 1961, Pub.L. 85-344, Title I, § 102(a), 75 Stat. 759.

§ 238. Payments to local school agencies—Children of persons who reside and work on Federal property; parent in uniformed serivces

(a) For the purpose of computing the amount to which a local educational agency is entitled under this section for any fiscal year, the Commissioner shall determine the number of children who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such fiscal year, and who, while in attendance at such schools, resided on Federal property and (1) did so with a parent employed on Federal property situated in whole or in part in the same State as the school district of such agency or situated within reasonable commuting distance from the school district of such agency, or (2) had a

parent who was on active duty in the uniformed services (as defined in section 231 of Title 37).

Children of persons who reside or work on Federal property

(b) For the purpose of computing the amount to which a local educational agency is entitled under this section for any fiscal year ending prior to July 1, 1963, the Commissioner shall also determine the number of children (other than children to whom subsection (a) of this section applies) who were in average daily attendance at the schools of a local educational agency, and for whom such agency provided free public education, during such fiscal year and who, while in attendance at such schools, either resided on Federal property, or resided with a parent employed on Federal property situated in whole or in part in the same State as such agency or situated within reasonable commuting distance from the school district of such agency. A child of a parent who commenced residing in or near the school district of such an agency while assigned to employment, as a member of the Armed Forces on active duty, on Federal property (situated in whole or in part in the same State as the school district of such agency or within reasonable commuting distance from such school district) and who was subsequently assigned elsewhere on active duty as a member of the Armed Forces, shall continue to be considered as residing with a parent employed on such Federal property for so long as the parent is so assigned elsewhere.

Computation of amount of entitlement

(c) (1) The amount to which a local educational agency is entitled under this section for any fiscal

year shall be an amount equal to (A) the local contribution rate (determined under subsection (d) of this section) multiplied by (B) the sum of the number of children determined under subsection (a) and one-half of the number determined under subsection (b) of this section.

(2) No local educational agency shall be entitled to receive any payment for a fiscal year with respect to a number of children determined under subsection (a) or subsection (b) of this section, as the case may be, unless the number of children who were in average daily attendance during such year and to whom such subsection applies—

(A) is ten or more; and

(B) amounts to 3 per centum or more of the total number of children who were in average daily attendance during such year and for whom such agency provided free public education, except that such 3 per centum requirement need not be met by such agency for any period of two fiscal years which follows a fiscal year during which such agency met such requirement and was entitled to payment under the provisions of this section, but the payment, under the provisions of this section to such agency for the second fiscal year of any such two-year period during which such requirement is not met, shall be reduced by 50 per centum of the amount thereof.

For the purposes of this paragraph and paragraph (3), a local educational agency may count as children determined under subsection (b) of this section any number of children determined under subsection (a) of this section. Notwithstanding the provisions of clause (B) of this paragraph, the Com-

missioner may waive the 3 per centum condition of entitlement contained in such clause whenever, in his judgment, exceptional circumstances exist which would make the application of such condition inequitable and would defeat the purposes of this chapter.

(3) Notwithstanding the preceding provisions of this section, where the average daily attendance at the schools of any local educational agency during the fiscal year ending June 30, 1957, exceeded 35,000, such agency's percentage requirement for eligibility (as set forth in paragraph (2) of this subsection) shall be 6 per centum instead of 3 per centum (and the provisions of the last sentence of such paragraph (2) which relate to the lowering of the percentage requirement shall not apply): *Provided,* That this paragraph shall not apply to any agency or consolidated agencies which have qualified for payments under this chapter before August 12, 1958, by virtue of having less than thirty-five thousand average daily attendance during the fiscal year ending June 30, 1939.

(4) If—

(A) the amount computed under paragraph (1) of this subsection for a local educational agency for any fiscal year, together with the funds available to such agency from State, local, and other Federal sources (including funds available under section 239 of this title) is, in the judgment of the Commissioner, less than the amount necessary to enable such agency to provide a level of education equivalent to that maintained in the school districts of the State which, in the judgment of the Commissioner, are generally comparable to the school district of such agency;

(B) such agency is, in the judgment of the Commissioner, making a reasonable tax effort and exercising due diligence in availing itself of State and other financial assistance;

(C) not less than 50 per centum of the total number of children who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such fiscal year resided on Federal property; and

(D) the eligibility of such agency under State law for State aid with respect to the free public education of children residing on Federal property, and the amount of such aid, is determined on a basis no less favorable to such agency than the basis used in determining the eligibility of local educational agencies for State aid, and the amount thereof, with respect to the free public education of other children in the State,

the Commissioner may increase the amount computed under paragraph (1) of this subsection to the extent necessary to enable such agency to provide a level of education equivalent to that maintained in such comparable school districts; except that this paragraph shall in no case operate to increase the amount computed for any fiscal year under paragraph (1) of this subsection for a local educational agency above the amount determined by the Commissioner to be the cost per pupil of providing a level of education equivalent to that maintained in such comparable school districts, multiplied by the number of children who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education,

during such year and who resided on Federal property during such year, minus the amount of State aid which the Commissioner determines to be available with respect to such children for the year for which the computation is being made.

(5) The determinations whether a local educational agency has met the percentage requirements for eligibility under paragraphs (2), (3), or (4) of this subsection for any fiscal year shall be made on the basis of estimates by the Commissioner made prior to the close of such year, except that an underestimate made by the Commissioner pursuant to the foregoing provisions of this sentence shall not operate to deprive an agency of its entitlement to any payments under this section to which it would be entitled had the estimate been accurate.

Local contribution rate; special determination for Territories

(d) The local contribution rate for a local educational agency (other than a local educational agency in Puerto Rico, Wake Island, Guam, or the Virgin Islands, or in a state in which a substantial proportion of the land is in unorganized territory for which a State agency is the local educational agency, or in a State in which there is only one local educational agency) for any fiscal year shall be computed by the Commissioner of Education, after consulting with the State educational agency and the local educational agency, in the following manner:

(1) he shall determine which school districts within the State are in his judgment generally comparable to the school district of the agency for which the computation is being made; and

(2) he shall then divide (A) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which he is making the computation, which the local educational agencies of such comparable school districts made from revenues derived from local sources, by (B) the aggregate number of children in average daily attendance to whom such agencies provided free public education during such second preceding fiscal year.

The local contribution rate shall be an amount equal to the quotient obtained under clause (2) of this subsection. If, in the judgment of the Commissioner, the current expenditures in those school districts which he has selected under clause (1) of this subsection are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in the school district of the local educational agency for which the computation is being made, a level of education equivalent to that maintained in such other districts, the Commissioner may increase the local contribution rate for such agency by such amount as he determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. In no event shall the local contribution rate for any local educational agency in any State (other than Puerto Rico, Wake Island, Guam, or the Virgin Islands) for any fiscal year be less than (i) 50 per centum of the average per pupil expenditure in such State or (ii) 50 per centum of the average per pupil expenditure in the United States (which for the purposes of this sentence and the next sentence means the fifty States and the District of Columbia), but not to exceed the average per pupil expenditure in the State:

30, 1959, the application of clause (ii) of this sen-
Provided, That if, for the fiscal year ending June
tence results in a lower local contribution rate than
resulted from the application of such clause during
the fiscal year ending June 30 1958, as such clause
was then in effect, then such clause, as in effect
during the fiscal year ending June 30, 1958, shall
be in effect during the fiscal year ending June 30,
1959. For the purposes of the preceding sentence
the "average per pupil expenditure" in a State, or
in the United States, shall be the aggregate current
expenditures, during the second fiscal year preceed-
ing the fiscal year for which the computation is
made, of all local educational agencies in the State,
or in the United States, as the case may be (without
regard to the sources of funds from which such ex-
penditures are made), divided by the aggregate
number of children in average daily attendance to
whom such agencies provided free public education
during such preceding fiscal year. The local con-
tribution rate for any local educational agency in
Puerto Rico, Wake Island, Guam or the Virgin
Islands, or in any state in which a substantial pro-
portion of the land is in unorganized territory for
which a State agency is the local educational agency,
or in any State in which there is only one local ed-
ucational agency, shall be determined for any fiscal
year by the Commissioner in accordance with pol-
icies and principles which will, in his judgment, best
effectuate the purposes of this chapter and most
nearly approximate the policies and principles pro-
vided herein for determining local contribution rates
in other States.

Deduction of certain Federal contributions

(e) In determining the total amount which a local

educational agency is entitled to receive under this section (other than subsection (c) (4) of this section) for a fiscal year, the Commissioner shall deduct (1) such amount as he determines such agency derived from other Federal payments (as defined in section 237 (b) (1) of this title) and actually had available in such year for current expenditures (but only to the extent such payments are not deducted under the last sentence of section 237(a) of this title; and, in the case of Federal payments representing an allotment to the local educational agency from United States Forestry Reserve funds, Taylor Grazing Act funds, United States Mineral Lease Royalty funds, Migratory Bird Conservation Act funds, or similar funds, only to the extent that children who reside on or with a parent employed on the property with respect to which such funds are paid are included in determining the amount to which such agency is entitled under this section), and (2) such amount as he determines to be the value of transportation and of custodial and other maintenance services furnished such agency by the Federal Government during such year.

Adjustment for certain decreases in Federal activities

(f) Whenever the Commissioner determines that

(1) a local educational agency has made preparations to provide during a fiscal year free public education for a certain number of children to whom subsection (a) or (b) applies;

(2) such preparations were in his judgment reasonable in the light of the information available to such agency at the time such preparations were made; and

(3) such number has been substantially reduced by reason of a decrease in or cessation of Federal activities or by reason of a failure of any of such activities to occur,

the amount to which such agency is otherwise entitled under this section for such year shall be increased to the amount to which, in the judgment of the Commissioner, such agency would have been entitled but for such decrease in or cessation of Federal activities or the failure of such activities to occur, minus any reduction in current expenditures for such year which the Commissioner determines that such agency has effected, or reasonably should have effected, by reason of such decrease in or cessation of Federal activities or the failure of such activities to occur. Sept. 30, 1950, c. 1124, § 3, 64 Stat. 1102; Aug. 8, 1953, c. 402, § 2, 67 Stat. 530; Aug. 12, 1955, c. 868, § 1, 69 Stat. 713; Aug. 1, 1956, c. 852, § 10, 70 Stat. 909; Aug. 3, 1956, c. 915, Title II, §§ 202-206, 70 Stat. 970; Aug. 12, 1958, Pub.L. 85-620, Title II, § 202, 72 Stat. 559; June 25, 1959, Pub.L. 86-70, § 18(d) (1)-(3), 73 Stat. 144; July 12, 1960, Pub.L. 86-624, § 14(d) (1)-(3), 74 Stat. 414; Oct. 3, 1961, Pub.L. 87-344, Title I, § 102(a), 75 Stat. 759.

§ 239. Sudden and substantial increases in attendance—Increases occurring after July 1, 1950; amount of contribution

(a) If the Commissioner determines for any fiscal year ending prior to July 1, 1963—

(1) that, as a direct result of activities of the United States (carried on either directly or through a contractor), an increase in the number of children

in average daily attendance at the schools of any local educational agency has occurred in such fiscal year, which increase so resulting from activities of the United States is equal to at least 5 per centum of the difference between the number of children in average daily attendance at the schools of such agency during the preceding fiscal year and the number of such children whose attendance during such year resulted from activities of the United States (including children who resided on Federal property or with a parent employed on Federal property); and

(2) that such activities of the United States have placed on such agency a substantial and continuing financial burden; and

(3) that such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance but is unable to secure sufficient funds to meet the increased educational costs involved,

then such agency shall be entitled to receive for such fiscal year an amount equal to the product of—

(A) the number of children which the Commissioner determines to be the increase, so resulting from activities of the United States, in such year in average daily attendance; and

(B) the amount which the Commissioner determines to be the current expenditures per child necessary to provide free public education to such additional children during such year, minus the amount which the Commissioner determines to be available from State, local and Federal sources for such purpose (not counting as available for such purpose

either payments under this chapter or funds from local sources necessary to provide free public education to other children).

For the next fiscal year (except where the determination under the preceding sentence has been made with respect to the fiscal year ending June 30, 1963) such agency shall be entitled to receive 50 per centum of such product reduced by the amount of such product which is attributable to children with respect to whom such agency is, or upon application would be, entitled to receive any payment under section 238 of this title for such fiscal year, but not to exceed for such year the amount which the Commissioner determines to be necessary to enable such agency, with the State, local, and other Federal funds available to it for such purpose, to provide a level of education equivalent to that maintained in the school districts in such State which in his judgment are generally comparable to the school district of such agency. The determinations whether an increase has occurred for purposes of clause (1) of this subsection and whether such increase meets the 5 per centum requirement contained in such clause, for any fiscal year, shall be made on the basis of estimates by the Commissioner made prior to the close of such year, except that an underestimate made by the Commissioner pursuant to the foregoing provisions of this sentence shall not operate to deprive an agency of its entitlement to any payments under this section to which it would be entitled had the estimate been accurate. The determination under clause (B) of this subsection shall be made by the Commissioner after considering the current expenditures per child in providing free public education to those school

districts in the State which, in the judgment of the Commissioner, are generally comparable to the school district of the local educational agency for which the computation is being made.

Increases occurring prior to July 1, 1950; amount of contribution

(b) (1) If the Commissioner determines in any fiscal year ending before July 1, 1954,—

(A) that, as the result of activities of the United States (carried on either directly or through a contractor), an increase in the number of children in average daily attendance at the schools of any local educational agency has occurred after June 30, 1939, and before July 1, 1950; and

(B) that the portion of such increase so resulting from activities of the United States which still exists in such fiscal year amounts to not less than 25 per centum (or to not less than 15 per centum where, in the judgment of the Commissioner, exceptional circumstances exist which would make the application of the 25 per centum condition of entitlement inequitable and would defeat the purposes of this chapter) of the number of all children in average daily attendance at the schools of such agency during the fiscal year ending June 30, 1939; and

(C) that such activities of the United States have placed on such agency a substantial and continuing financial burden; and

(D) that such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance but is

unable to secure sufficient funds to meet the increased educational costs involved,

then such agency shall be entitled to receive for the fiscal year in which the determination is made, and for each succeeding fiscal year ending before July 1, 1954, an amount determined as follows: For the fiscal year ending June 30, 1951, 100 per centum of the product determined as provided in paragraph (2) of this subsection; for the fiscal year ending June 30, 1952, 75 per centum of such product; for the fiscal year ending June 30, 1953, 50 per centum of such product; and for the fiscal year ending June 30, 1954, 25 per centum of such product.

(2) The product referred to in paragraph (1) of this subsection for the fiscal year shall be an amount equal to—

(A) the number of children which the Commissioner determines to be the increase in average daily attendance at the schools of such agency, so resulting from activities of the United States, which still exists in such fiscal year (determined as provided in clauses (A) and (B) of paragraph (1) of this subsection); multiplied by

(B) the amount which the Commissioner determines to be the current expenditures per child necessary to provide free public education to such additional children during such year, minus the amount which the Commissioner determines to be available from Federal, State, and local sources for such purposes (not counting as available for such purpose either payments under this chapter, or funds from local sources required to meet current

expenditures necessary to provide free public education to other children).

The number of children which the Commissioner determines under clause (A) of paragraph (1) of this subsection to be the increase in average daily attendance which still exists in any fiscal year shall not exceed the number of all children in average daily attendance at the schools of such agency during such year, minus the number of all children in average daily attendance at the schools of such agency during the fiscal year ending June 30, 1939. The determination under clause (B) of paragraph (1) of this subsection shall be made by the Commissioner after considering the current expenditures per child in providing free education in those school districts within the State which, in the judgment of the Commissioner, are most nearly comparable to the school district of the local educational agency for which the computation is being made.

Counting of certain children in determination of increases

(c) In determining under subsection (a) of this section whether there has been an increase in attendance in any fiscal year directly resulting from activities of the United States and the number of children with respect to whom payment is to be made for any fiscal year, the Commissioner shall not count—

(A) children with respect to whom a local educational agency is, or upon application would be, entitled to receive any payment under section 238 of this title for such fiscal year: *Provided*, That the Commissioner shall count for such purposes as an increase directly resulting from activities of the United States, an increase in the number of

children who reside on Federal property or reside with a parent employed on Federal property, if the local educational agency files, in accordance with regulations of the Commissioner, its election that such increase be counted for such purposes instead of for the purposes of section 238 of this title; and

(B) children whose attendance is attributable to activities of the United States carried on in connection with real property which has been excluded from the definition of Federal property by the last sentence of paragraph (1) of section 244 of this title.

Adjustment for decreases in Federal activities

(d) Whenever the Commissioner determines that—

(1) a local educational agency has made preparations to provide during a fiscal year free public education for a certain number of children to whom subsection (a) of this section applies;

(2) such preparations were in his judgment reasonable in the light of the information available to such agency at the time such preparations were made; and

(3) such number has been substantially reduced by reason of a decrease in or cessation of Federal activities or by reason of a failure of any such activities to occur,

the amount to which such agency is otherwise entitled under this section for such year shall be increased to the amount to which, in the judgment of the Commissioner, such agency would have been entitled but for such decrease in or cessation of Federal activities or the failure of such activities to occur,

minus any reduction in current expenditures for such year which the Commissioner determines that such agency has effected, or reasonably should have effected, by reason of such decrease in or cessation of Federal activities or the failure of such activities to occur.

Consultation with State and local authorities

(e) All determinations of the Commissioner under this section shall be made only after consultation with the State educational agency and the local educational agency. Sept. 30, 1950, c. 1124, § 4, 64 Stat. 1104; Aug. 8, 1953, c. 402, §§ 3-5, 67 Stat. 532; Aug. 12, 1955, c. 868, §§ 1, 2, 69 Stat. 713; Aug. 3, 1956, c. 915, Title II, § 207, 208, 70 Stat. 972; Aug. 12, 1958, Pub.L. 85-620, Title II, § 203, 72 Stat. 560; Oct. 3, 1961, Pub.L. 87-344, Title I, § 102(a), 75 Stat. 759.

§ 240. Method of making payments—Application

(a) No local educational agency shall be entitled to any payment under sections 237, 238, or 239 of this title for any fiscal year except upon application therefor, submitted through the State educational agency and filed in accordance with regulations of the Commissioner, which application gives adequate assurance that the local educational agency will submit such reports as the Commissioner may reasonably require to determine the amount to which such agency is entitled under this chapter.

Payment

(b) The Commissioner shall, subject to the provisions of subsection (c) of this section, from time to time pay to each local educational agency, in ad-

vance or otherwise, the amount which he estimates such agency is entitled to receive under this chapter. Such estimates shall take into account the extent (if any) to which any previous estimate of the amount to be paid such agency under this chapter (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it. Such payments shall be made through the disbursing facilities of the Department of the Treasury and prior to audit or settlement by the General Accounting Office.

Adjustments where necessitated by appropriations

(c) If the funds appropriated for a fiscal year for making the payments provided in this chapter are not sufficient to pay in full the total amounts which the Commissioner estimates all local educational agencies will be entitled to receive under this chapter for such year, the Commissioner shall, subject to any limitation contained in the chapter appropriating such funds, allocate such funds, other than so much thereof as he estimates to be required for section 241 of this title, among sections 237, 238, and 239(a) of this title in the proportion that the amount he estimates to be required under each of such sections 237, 238, and 239(a) of this title bears to the total estimated to be required under all such sections. The amount thus allocated to any of such sections 237, 238, and 239(a) of this title shall be available for payment of a percentage of the amount to which each local educational agency is entitled under such section (including, in the case of section 238 of this title, any increases under subsection (c)(4) of section 238 of this title), such percentage to be equal to the percentage which the amount thus allocated to such section 238 of this title is of the

amount to which all such agencies are entitled under such section. In case the amount so allocated to a section for a fiscal year exceeds the total to which all local educational agencies are entitled under such section for such year or in case additional funds become available for carrying out such sections, the excess, or such additional funds, as the case may be, shall be allocated by the Commissioner, among the sections for which the previous allocations are inadequate, on the same basis as is provided above for the initial allocation. Sept. 30, 1950, c. 1124, § 5, 64 Stat. 1106; Aug. 8, 1953, c. 402, §§ 6, 7, 67 Stat. 534; Aug. 3, 1956, c. 915, Title II, § 209, 70 Stat. 972.

§ 241. Education of children where local agencies cannot supply facilities — Necessary arrangements by Commissioner; standard of education

(a) In the case of children who reside on Federal property—

(1) if no tax revenues of the State or any political subdivision thereof may be expanded for the free public education of such children; or

(2) if it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children,

the Commissioner shall make such arrangements (other than arrangements with respect to the acquisition of land, the erection of facilities, interest, or debt service) as may be necessary to provide free public education for such children. Such arrangements to provide free public education may also be

made for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local governmental authority and it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children. To the maximum extent practicable, the local educational agency, or the head of the Federal department or agency, with which any arrangement is made under this section, shall take such action as may be necessary to ensure that the education provided pursuant to such arrangement is comparable to free public education provided for children in communities in the State, or, in the case of education provided under this section outside the continental United States, Alaska, and Hawaii, comparable to free public education provided for children in the District of Columbia. For the purpose of providing such comparable education, personnel may be employed without regard to the civil-service or classification laws. In any case where education was being provided on January 1, 1955, or thereafter under an arrangement made under this subsection for children residing on an Army, Navy (including the Marine Corps), or Air Force installation, it shall be presumed, for the purposes of this subsection, that no local educational agency is able to provide suitable free public education for the children residing on such installation, until the Commissioner and the Secretary of the military department concerned jointly determine, after consultation with the appropriate State educational agency, that a local educational agency is able to do so.

Education of children in adjacent areas

(b) In any case in which the Commissioner makes such arrangements for the provision of free public education in facilities situated on Federal property, he may also make arrangements for providing free public education in such facilities for children residing in any area adjacent to such property with a parent who, during some portion of the fiscal year in which such education is provided, was employed on such property, but only if the Commissioner determines after consultation with the appropriate State educational agency (1) that the provision of of such education is appropriate to carry out the purposes of this chapter, (2) that no local educational agency is able to provide suitable free public education for such children, and (3) in any case where in the judgment of the Commissioner the need for the provision of such education will not be temporary in duration, that the local educational agency of the school district in which such children reside, or the State educational agency, or both, will make reasonable tuition payments to the Commissioner for the education of such children. Such payments may be made either directly or through deductions from amounts to which the local educational agency is entitled under this chapter, or both, as may be agreed upon between such agency and the Commissioner. Any amounts paid to the Commissioner by a State or local educational agency pursuant to this section shall be covered into the Treasury as miscellaneous receipts.

Education of children whose parents are employed in certain Territories and Possessions

(c) In any case in which the Commissioner makes

arrangements under this section for the provision of free public education in facilities on Federal property in Puerto Rico, Wake Island, Guam, or the Virgin Islands, he may also make arrangements for providing free public education in such facilities for children residing with a parent employed by the United States, but only if the Commissioner determines after consultation with the appropriate State educational agency (1) that the provision of such education is appropriate to carry out the purposes of this chapter, and (2) that no local educational agency is able to provide suitable free public education for such children.

Restrictions on making arrangements

(d) The Commissioner may make an arrangement under this section only with a local educational agency or with the head of a Federal department or agency administering Federal property on which children reside who are to be provided education pursuant to such arrangement or, in the case of children to whom the second sentence of subsection (a) of this section applies, with the head of any Federal department or agency having jurisdiction over the parents of some or all of such children. Except where the Commissioner makes arrangements pursuant to the second sentence of subsection (a) of this section, arrangements may be made under this section only for the provision of education in facilities of a local educational agency or in facilities situated on Federal property.

Limit on payments

(e) To the maximum extent practicable, the Commissioner shall limit the total payments made pursuant to any such arrangement for educating chil-

dren within the continental United States, Alaska, or Hawaii, to an amount per pupil which will not exceed the per pupil cost of free public education provided for children in comparable communities in the State. The Commissioner shall limit the total payments made pursuant to any such arrangement for educating children outside the continental United States, Alaska, or Hawaii, to an amount per pupil which will not exceed the amount he determines to be necessary to provide education comparable to the free public education provided for children in the District of Columbia.

Restrictions on operation of schools by Commissioner

(f) In the administration of this section, the Commissioner shall not exercise any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system. Sept 30, 1950, c. 1124, § 6, 64 Stat. 1107; Aug. 8, 1953, c. 402, § 8, 67 Stat. 535; Aug. 1, 1955, c. 446, 69 Stat. 433; Aug. 1, 1956, c. 852, § 10, 70 Stat. 909; May 6, 1960, Pub.L. 86-449, Title V, § 501, 74 Stat. 89.

§ 242. Supervision over schools; rules and regulations; reports

(a) In the administration of this chapter, no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system of any local or State educational agency.

(b) The Commissioner shall administer this chapter, and he may make such regulations and perform

such other functions as he finds necessary to carry out the provisions of this chapter.

(c) The Commissioner shall include in his annual report to the Congress a full report of the administration of his functions under this chapter, including a detailed statement of receipts and disbursements. Sept. 30, 1950, c. 1124, § 7, 64 Stat. 1107.

§243. Utilization of other Federal agencies; transfer and availability of appropriations

(a) In carrying out his functions under this chapter, the Commissioner is authorized, pursuant to proper agreement with any other Federal department or agency, to utilize the services and facilities of such department or agency, and when he deems it necessary or appropriate, to delegate to any officer or employee thereof the function under section 241 of this title of making arrangements for providing free public education. Payment to cover the cost of such utilization or of carrying out such delegated function shall be made either in advance or by way of reimbursement, as may be provided in such agreement. The Commissioner is authorized to delegate to any officer or employee of the Office of Education any of his functions under this chapter except the making of regulations.

(b) All Federal departments or agencies administering Federal property on which children reside, and all such departments or agencies principally responsible for Federal activities which may occasion assistance under this chapter, shall to the maximum extent practicable comply with requests of the Commissioner for information he may require in carrying out the purposes of this chapter.

(c) Such portion of the appropriations of any other department or agency for the fiscal year ending June 30, 1951, as the Director of the Bureau of the Budget determines to be available for the same purposes as this chapter, shall except to the extent necessary to carry out during such year contracts made prior to September 30, 1950, be transferred to the Commissioner for use by him in carrying out such purposes.

(d) No appropriation to any department or agency of the United States, other than an appropriation to carry out this chapter, shal be available for the employment of teaching personnel for the provision of free public education for children in any State or for payments to any local educational agency (directly or through the State educational agency) for free public education for children, except that nothing in the foregoing provisions of this subsection shall affect the availability of appropriations for the maintenance and operation of school facilities (1) on Federal property under the control of the Atomic Energy Commission or (2) by the Bureau of Indian Affairs, or the availability of appropriations for the making of payments directed to be made by section 2391 of Title 42, or the availability of appropriations under sections 452-455 of Title 25. Sept. 30, 1950, c. 1124, § 8, 64 Stat. 1108; Aug. 8, 1953, c. 402, § 9, 67 Stat. 536; Aug. 4, 1955, c. 543, ch. 11, § 202, 69 Stat. 485; Aug. 12, 1955, c. 868, § 1, 69 Stat. 137; Aug. 3, 1956, c. 915, Title II, § 210, 70 Stat. 972; Aug. 12, 1958, Pub.L. 85-620, Title II, § 204, 72 Stat. 560.

§ 244. Definitions

For the purposes of this chapter—

(1) The term "Federal property' means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Such term includes real property which is owned by the United States and leased therefrom and the improvements thereon, even though the lessee's interest, or any improvement on such property, is subject to taxation by a State or a political subdivision of a State or by the District of Columbia. Such term also includes (A) except for purposes of section 241 of this title, real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States, (B) for one year beyond the end of the fiscal year in which occurred the sale or transfer thereof by the United States, any housing property considered prior to such sale or transfer to be Federal property for the purposes of this chapter, and (C) any school which is providing flight training to members of the Air Force under contractual arrangements with the Department of the Air Force at an airport which is owned by a State or a political subdivision of a State. Notwithstanding the foregoing provisions of this paragraph, such term does not include (A) any real property used by the United States primarily for the provision of services or benefits to the local area in which such property is situated, (B) any real property used for a labor supply center, labor home, or labor camp for migratory farm workers, (C) any real property under the jurisdiction of the Post Office Department and used primarily for the provision of postal services, or (D) any low-rent housing project held

under title II of the National Industrial Recovery Act, the Emergency Relief Appropriation Act of 1935, the United States Housing Act of 1937, the Act of June 28, 1940 (Public Law 671 of the Seventy-sixth Congress), or any law amendatory of or supplementary to any of such Acts.

(2) The term "child' means any child who is within the age limits for which the applicable State provides free public education.

(3) The term "parent" includes a legal guardian or other person standing in loco parentis.

(4) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State.

(5) The term "current expenditures" means expenditures for free public education to the extent that such expenditures are made from current revenues, except that such term does not include any such expenditures for the acquisition of land, the erection of facilities, interest, or debt service.

(6) The term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education.

(7) The term "State educational agency" means the officer or agency primarily responsible for the State

supervision of public elementary and secondary schools.

(8) The term "State" means a State, Puerto Rico, Wake Island, Guam, or the Virgin Islands.

(9) The terms "Commissioner of Education" and "Commissioner" means [1] the United States Commissioner of Education.

(10) Average daily attendance shall be determined in accordance with State law; except that, notwithstanding any other provision of this chapter, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this chapter the attendance of such child at such school shall be held and considered (A) to be attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such tuition payment under the contract. Sept. 30, 1950, c. 1124, § 9, 64 Stat. 1108; Aug. 8, 1953, c. 402, § 10, 67 Stat. 536; Aug. 1, 1956, c. 852, § 10, 70 Stat. 909; Aug. 3, 1956, c. 915, Title II, § 211, 70 Stat. 972; Aug. 12, 1958, Pub.L. 85-620, Title II, § 205, 2 Stat. 560; June 25, 1959, Pub.L. 86-70, § 18(d) (4), 73 Stat. 145; July 12, 1960, Pub.L. 86-624, § 14(d) (4), 74 Stat. 414.

6. 20 U.S.C. 631-645

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[1] So in original

§ 631. Declaration of purpose; authorization of appropriations

The purpose of this chapter is to provide assistance for the construction of urgently needed minimum school facilities in school districts which have had substantial increases in school membership as a result of new or increased Federal activities. There are authorized to be appropriated for the fiscal year ending June 30, 1959, and each fiscal year thereafter, such sums as the Congress may determine to be necessary for such purpose. Sums so appropriated, other than sums appropriated for administration, shall remain available until expended. Sept. 23, 1950, c. 995, § 1, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 548.

§ 632. Annual apportionment of funds; use of remainder

For each fiscal year the Commissioner shall determine the portion of the funds appropriated pursuant to section 631 of this title which shall be available for carrying out the provisions of sections 639 and 640 of this title. The remainder of such funds shall be available for paying to local educational agencies the Federal share of the cost of projects for the construction of school facilities for which applications have been approved under section 636 of this title. Sept. 23, 1950, c. 995, § 2, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 548.

§ 633. DATES for filing applications; priorities

The Commissioner shall from time to time set dates by which applications for payments under this chap-

ter with respect to construction projects must be filed, except that the last such date with respect to applications for payments on account of children referred to in paragraphs (2) or (3) of section 635(a) of this title shall be not later than June 30, 1963. The Commissioner shall by regulation prescribe an order of priority, based on relative urgency of need, to be followed in approving applications in the event the funds appropriated under this chapter and remaining available on any such date for payment to local educational agencies are less than the Federal share of the cost of the projects with respect to which applications have been filed prior to such date (and for which funds under this chapter have not already been obligated). Only applications meeting the conditions for approval under this chapter (other than section 636(b)(2)(C) of this title) shall be considered applications for purposes of the preceding sentence. Sept. 23, 1950, c. 995, § 3, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 548, and amended Oct. 3, 1961, Pub.L. 87-344, Title I, § 101(a), 75 Stat. 759.

§ 634. Federal share of cost for any project

Subject to section 635 of this title (which imposes limitations on the total of the payments which may be made to any local educational agency), the Federal share of the cost of a project under this chapter shall be equal to such cost, but in no case to exceed the cost, in the school district of the applicant, of constructing minimum school facilities and in no case to exceed the cost in such district of constructing minimum school facilities for the estimated number of children who will be in the membership of the schools of such agency at the close of the in-

crease period and who will otherwise be without such facilities at such time. For the purposes of the preceding sentence, the number of such children who will otherwise be without such facilities at such time shall be determined by reference to those facilities which (1) are built or under contract as of the date on which the Commissioner set, under section 633 of this title, the earliest date on or before which the application for such project was filed, or (2) as of the date the application for such project is approved, are included in a project the application for which has been approved under this chapter. Sept. 23, 1950, c. 995, § 4, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 549.

§ 635. Limitation on total payments to local agencies —Determination by categories of Federally-connected children.

(a) Subject to the limitations in subsections (c) and (d) of this section, the total of the payments to a local educational agency under this chapter may not exceed the sum of the following:

(1) the estimated increase, since the base year, in the number of children residing on Federal property with a parent employed on Federal property (situated in whole or in part in the same State as the school district of such agency or within reasonable commuting distance from such school district), multiplied by 95 per centum of the average per pupil cost of constructing minimum school facilities in the State in which the school district of such agency is situated; and

(2) the estimated increase, since the base year, in the number of children residing on Federal

property, or residing with a parent employed on Federal property (situated in whole or in part in the same State as the school district of such agency or within reasonable commuting distance from such school district), multiplied by 50 per centum of the average per pupil cost of constructing minimum school facilities in the State in which the school district of such agency is situated. A child of a parent who commenced residing in or near the school district of such an agency while assigned to employment, as a member of the Armed Forces on active duty, on Federal property (situated in whole or in part in the same State as the school district of such agency or within reasonable commuting distance from such school district) and who was subsequently assigned elsewhere on active duty as a member of the Armed Forces, shall continue to be considered as residing with a parent employed on such Federal property, for purposes of this paragraph and and paragraph (1) of this subsection, for so long as the parent is so assigned; and

(3) the estimated increase, since the base year, in the number of children whose membership results directly from activities of the United States (carried on either directly or through a contractor), multiplied by 45 per centum of the average per pupil cost of constructing minimum school facilities in the State in which the school district of such agency is situated. For purposes of this paragraph, the Commissioner shall not consider as activities of the United States those activities which are carried on in connection with real property excluded from the definition of Federal property by the last sentence of paragraph (1) of

section 645 of this title, but shall (if the local educational agency so elects pursuant to subsection (b) of this section) consider as children whose membership results directly from activities of the United States children residing on Federal property or residing with a parent employed on Federal property.

In computing for any local educational agency the number of children in an increase under paragraph (1), (2), or (3), the estimated number of children described in such paragraph who will be in the membership of the schools of such agency at the close of the increase period shall be compared with the estimated number of such children in the average daily membership of the schools of such agency during the base year.

Election where two or more categories apply

(b) If two or more of the paragraphs of subsection (a) of this section apply to a child, the local educational agency shall elect which of such paragraphs shall apply to such child, except that, notwithstanding the election of a local educational agency to have paragraph (2) apply to a child instead of paragraph (1), the determination of the maximum amount for such agency under subsection (a) of this section shall be made without regard to such election.

Eligibility conditions for each category

(c) A local educational agency shall not be eligible to have any amount included in its maximum by reason of paragraph (1), (2), or (3) of subsection (a) of this section unless the increase in children referred to in such paragraph, prior to the application

of the limitation in subsection (d) of this section, is at least twenty and is equal to at least 5 per centum in the case of paragraph (1) or (2), and 10 per centum in the case of paragraph (3), of the number of all children who were in the average daily membership of the schools of such agency during the base year, and unless, in the case of paragraph (3), the construction of additional minimum school facilities for the number of children in such increase will, in the judgment of the Commissioner, impose an undue financial burden on the taxing and borrowing authority of such agency: *Provided*, That children residing on any housing property which, prior to sale or transfer by the United States, was considered to be Federal property for the purposes of this chapter, shall not be considered as having been federally connected in determining the eligibility of the local educational agency under this subsection.

Reduction in number of Federally-connected children to be used in computation, in certain cases

(d) If (1) the estimated number of nonfederally connected children who will be in the membership of the schools of a local educational agency at the close of the increase period is less than (2) 107 per centum of the number of such children who were in the average daily membership of such agency during the base year, the total number of children counted for purposes of subsection (a) of this section with respect to such agency shall be reduced by the difference between (1) and (2) hereof. For purposes of this subsection, all children in the membership of a local educational agency shall be counted as nonfederally connected children except children whose membership in the base year and in-

crease period was compared in computing an increase which meets the requirements of subsection (c) of this section.

Waiver of conditions

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, whenever and to the extent that, in his judgment, exceptional circumstances exist which make such action necessary to avoid inequity and avoid defeating the purposes of this chapter, the Commissioner may do any one or more of the following: (1) he may waive or reduce any percentage requirement or requirements in subsection (c) of this section; (2) he may waive the requirement contained in the first sentence of subsection (d) of this section or reduce the percentage specified in clause (2) of such sentence.

Limitation on numerical count of children

(f) If—

(1) the first year of the increase period for an application made by a local educational agency constitutes the second year of the increase period for a previous application made by such agency under this chapter, or under this chapter as in effect January 1, 1958, and

(2) any payment has been or may be made to such agency on the basis of such previous application,

then, in determining under this section the total of the payments which may be made to such agency on the basis of the later application, the total number of children counted for purposes of paragraph (1), (2), or (3), as the case may be, of subsection (a) of this section may not exceed—

(3) the number of children whose membership at the close of the increase period for the later application is compared with membership in the base year for purposes of such paragraph, minus

(4) the number of such children whose membership at the close of the increase period for the previous application was compared with membership in the base year for purposes of such paragraph.

Sept. 23, 1950, c. 995, § 5, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 549.

§ 636. Applications for payment—Submission and filing

(a) No payment may be made to any local educational agency under this chapter except upon application thereof which is submitted through the appropriate State educational agency and is filed with the Commissioner in accordance with regulations prescribed by him.

Contents; approval conditions

(b) (1) Each application by a local educational agency shall set forth the project for the construction of school facilities for such agency with respect to which it is filed, and shall contain or be supported by—

(A) a description of the project and the site therefor, preliminary drawings of the school facilities to be constructed thereon, and such other information relating to the project as may reasonably be required by the Commissioner;

(B) assurance that such agency has or will have title to the site, or the right to construct upon such site school facilities as specified in the application and to maintain such school facilities on such site for a period of not less than twenty years after the completion of the construction;

(C) assurance that such agency has legal authority to undertake the construction of the project to finance any non-Federal share of the cost thereof as proposed, and assurance that adequate funds to defray any such non-Federal share will be available when needed;

(D) assurance that such agency will cause work on the project to be commenced within a reasonable time and prosecuted to completion with reasonable diligence;

(E) assurance that the rates of pay for laborers and mechanics engaged in the construction will be not less than the prevailing local wage rates for similar work as determined in accordance with sections 276a to 276a—5 of Title 40;

(F) assurance that the school facilities of such agency will be available to the children for whose education contributions are provided in this chapter on the same terms, in accordance with the laws of the State in which the school district of such agency is situated, as they are available to other children in such school district; and

(G) assurance that such agency will from time to time prior to the completion of the project submit such reports relating to the project as the Commissioner may reasonably require.

(2) The Commissioner shall approve any application if he finds (A) that the requirements of paragraph (1) have been met and that approval of the project would not result in payments in excess of those permitted by sections 634 and 635 of this title, (B) after consultation with the State and local educational agencies, that the project is not inconsistent with overall State plans for the construction of school facilities, and (C) that there are sufficient Federal funds available to pay the Federal share of the cost of such project and of all other projects for which Federal funds have not already been obligated and applications for which, under section 633 of this title, have a higher priority: *Provided*, That the Commissioner may approve any application for payments under this chapter at any time after it is filed and before any priority is established with respect thereto under section 633 of this title if he determines that—

(i) on the basis of information in his possession, it is likely that the urgency of the need of the local educational agency is such that it would have a priority under section 633 of this title which would qualify it for payments under this chapter when such priorities are established, and

(ii) the number of children in the increase under section 635 (a) of this title is in large measure attributable to children who reside or will reside in housing newly constructed on Federal property.

Hearing

(c) No application under this chapter shall be disapproved in whole or in part until the Commissioner of Education has afforded the local educational agency reasonable notice and opportunity for hear-

ing. Sept. 23, 1950, c. 995, § 6, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 551.

§ 637. Payments to local agencies; repayment of unexpended funds

(a) Upon approving the application of any local educational agency under section 636 of this title, the Commissioner of Education shall pay to such agency an amount equal to 10 per centum of the Federal share of the cost of the project. After final drawings and specifications have been approved by the Commissioner of Education and the construction contract has been entered into, the Commissioner shall, in accordance with regulations prescribed by him and at such times and in such installments as may be reasonable, pay to such agency the remainder of the Federal share of the cost of the project.

(b) Any funds paid to a local educational agency under this chapter and not expended for the purposes for which paid shall be repaid to the Treasury of the United States. Sept. 23, 1950, c. 995, § 7, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 552.

§ 638. Additional payments in unusual cases

Not to exceed 10 per centum of the sums appropriated pursuant to this chapter for any fiscal year (exclusive of any sums appropriated for admisistration) may be used by the Commissioner, under regulations prescribed by him, to make grants to local educational agencies where (1) the application of such agencies would be approved under this chapter but for the agencies' inability, unless aided by such grants, to finance the non-Federal share of the

cost of the projects set forth in their applications, or (2) although the applications of such agencies have been approved, the projects covered by such applications could not, without such grants, be completed, because of flood, fire, or similar emergency affecting either the work on the projects or the agencies' ability to finance the non-Federal share of the cost of the projects. Such grants shall be in addition to the payments otherwise provided under this chapter, shall be made to those educational agencies whose need for additional aid is the most urgent and acute, and insofar as practicable shall be made in the same manner and upon the same terms and conditions as such other payments. Sept. 23, 1950, c. 995, § 8, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 552.

§ 639. Procedure in cases of temporary Federal activities; donation of temporary school facilities

Notwithstanding sections 631-638 of this title, whenever the Commissioner determines that the membership of some or all of the children, who may be included in computing under section 635 of this title the maximum on the total of the payments for any local educational agency, will be of temporary duration only, such membership shall not be included in computing such maximum. Instead, the Commissioner may make available to such agency such temporary school facilities as may be necessary to take care of such membership; or he may, where the local educational agency gives assurance that at least minimum school facilities will be provided for such children, pay (on such terms and conditions as he deems appropriate to carry out the purposes of this chapter) to such agency for use in construct-

ing school facilities an amount equal to the amount which he estimates would be necessary to make available such temporary facilities. In no case, however, may the amount so paid exceed the cost, in the school district of such agency, of constructing minimum school facilities for such children. The Commissioner may transfer to such agency or its successor all the right, title, and interest of the United States in and to any temporary facilities made available to such agency under this section (or section 309 of this Act as in effect January 1, 1958); any such transfer shall be without charge, but may be made on such other terms and conditions, and at such time as the Commissioner deems appropriate to carry out the purposes of this chapter. Sept. 23, 1950, c. 995, § 9, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 553.

§ 640. Children for whom local agencies are unable to provide education

In the case of children who it is estimated by the Commissioner in any fiscal year will reside on Federal property at the end of the next fiscal year—

(1) if no tax revenues of the State or any political subdivision thereof may be expended for the free public education of such children; or

(2) if it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children,

the Commissioner shall make arrangements for constructing or otherwise providing the minimum school facilities necessary for the education of such

children. Such arrangements may also be made to provide, on a temporary basis, minimum school facilities for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local government authority and it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children. To the maximum extent practicable school facilities provided under this section shall be comparable to minimum school facilities provided for children in comparable communities in the State. This section shall not apply (A) to children who reside on Federal property under the control of the Atomic Energy Commission, and (B) to Indian children attending federally operated Indian schools. Whenever it is necessary for the Commissioner to provide school facilities for children residing on Federal property under this section, the membership of such children may not be included in computing under section 635 of this title the maximum on the total of the payments for any local educational agency. Sept. 23, 1950, c. 995 § 10, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 553, and amended May 6, 1960, Pub.L. 86-449, Title V, § 502, 74 Stat. 89.

§ 641. Withholding of payments for noncompliance; judicial review of Commissioner's action in disapproving applications or withholding payments

(a) Whenever the Commissioner of Education, after reasonable notice and opportunity for hearing

to a local educational agency, finds (1) that there is a substantial failure to comply with the drawings and specifications for the project, (2) that any funds paid to a local educational agency under this chapter have been diverted from the purposes for which paid, or (3) that any assurance given in an application is not being or cannot be carried out, the Commissioner may forthwith notify such agency that no further payment will be made under this chapter with respect to such agency until there is no longer any failure to comply or the diversion or default has been corrected or, if compliance or correction is impossible, until such agency repays or arranges for the repayment of Federal moneys which have diverted or improperly expended.

(b) The final refusal of the Commissioner to approve part or all of any application under this chapter, and the Commissioner's final action under subsection (a) of this section, shall be subject to judicial review on the record, in the United States court of appeals for the circuit in which the local educational agency is located, in accordance with the provisions of the Administrative Procedure Act. Sept. 23, 1950, c. 995, § 11, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 554.

§ 642. Administration of chapter; supervision of schools; regulations; reports; prevailing wage provisions

(a) In the administration of this chapter, no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system of any local or State educational agency.

(b) The Commissioner of Education shall administer this chapter, and he may make such regulations or perform such other functions as he finds necessary to carry out the provisions of this chapter.

(c) The Commissioner shall include in his annual report to the Congress a full report of the administration of his functions under this chapter, including a detailed statement of receipts and disbursements.

(d) With respect to compliance with and enforcement of the prevailing wage provisions of section 636(b) (1) (E) of this title, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by the agencies administering such provisions, and shall cause to be made by the Department of Labor such investigations as he deems desirable. Sept. 23, 1950, c. 995 § 12, as added Aug. 12, 1958, Pub-L. 85-620, Title I, § 101, 72 Stat. 554.

§ 643. Delegation of functions; use of other Federal agencies; transfer and availability of appropriations

(a) The Commissioner may delegate to any officer or employee of the Office of Education any of his functions under this chapter, except the making of regulations. In carrying out his functions under this chapter, the Commissioner of Education may also utilize the facilities and services of any other Federal department or agency and may delegate the performance of any of his functions, except the making of regulations, to any officer or employee of any other Federal department or agency. The Commissioner of Education shall exercise the au-

thority contained in the preceding sentence whenever such exercise will avoid the creation within the Office of Education of a staff and facilities which duplicate existing available staffs and facilities. Any such utilization or delegation shall be pursuant to proper agreement with the Federal department or agency concerned; and payment to cover the cost thereof shall be made either in advance or by way of reimbursement, as may be provided in such agreement. Any delegation of functions or authority authorized under this section will not relieve the Commissioner of the responsibility placed on him by this chapter.

(b) All Federal departments or agencies administering Federal property on which children reside, and all such departments or agencies principally responsible for Federal activities which may give rise to a need for the construction of school facilities, shall to the maximum extent practicable, comply with requests of the Commissioner for information he may require in carrying out the purposes of this chapter.

(c) No appropriation to any department or agency of the United States, other than an appropriation to carry out this chapter, shall be available for the same purpose as this chapter; except that nothing in this subsection shall affect the availability of appropriations authorized, prior to September 23, 1950, for the construction of school facilities to be attended by Indian children or appropriations (1) for the construction of school facilities on Federal property under the control of the Atomic Energy Commission, (2) for the construction of school facilities which are to be federally operated for Indian children, or (3) for the construction of school facili-

ties under the Alaska Public Works Act, approved August 24, 1949. Sept. 23, 1950, c. 995, § 13, as added Aug. 12, 1958, Pub-L. 85-620, Title I, § 101, 72 Stat. 554.

§ 644. Assistance in other Federally-affected areas—Eligibility requirements

(a) If the Commissioner determines with respect to any local educational agency that—

(1) such agency is providing or, upon completion of the school facilities for which provision is made herein, will provide free public education for children who reside on Federal property, and whose membership in the schools of such agency has not formed and will not form the basis for payments under other provisions of this chapter, and that the total number of such children represents a substantial percentage of the total number of children for whom such agency provides free public education or that the total number of such children who reside on Indian lands located outside the school district of such agency equals or exceeds 100;

(2) the immunity of such Federal property to taxation by such agency has created a substantial and continuing impairment of its ability to finance needed school facilities;

(3) such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance available for the purpose; and

(4) such agency does not have sufficient funds available to it from other Federal, State, and local sources to provide the minimum school facilities required for free public education in its school district.

he may provide the additional assistance necessary to enable such agency to provide such facilities, upon such terms and in such amounts (subject to the provisions of this section) as the Commissioner may consider to be in the public interest; but such additional assistance may not exceed the portion of the cost of such facilities which the Commissioner estimates is attributable to children who reside on Federal property, and which has not been, and is not to be, recovered by the local educational agency from other sources, including payments by the United States under any other provisions of this chapter or any other law. Notwithstanding the provisions of this subsection, the Commissioner may waive the percentage requirement in paragraph (1) in the case of any application for additional assistance on account of children who reside on Indian lands whenever, in his judgment, exceptional circumstances exists which make such action necessary to avoid inequity and avoid defeating the purposes of this section. Assistance may be furnished under this subsection without regard to paragraph (2) (but subject to the other provisions of this subsection (c) of this section) to any local educational agency which provides free public education for children who reside on Indian lands located outside its school district. For purposes of this subsection "Indian lands" means Indian reservations or other real property referred to in the third sentence 645(1) of this title.

Authorization of appropriations; time limit on making agreements

(b) There are authorized to be appropriated for each fiscal year ending prior to July 1, 1963, such sums, not to exceed $60,000,000 in the aggregate, as may be necessary to carry out the provisions of this section. There are also authorized to be appropriated such sums as may be necessary for administration of such provisions. Amounts so appropriated, other than amounts appropriated for administration, shall remain available until expended, except that after June 30, 1963, no agreement may be made to extend assistance under this section.

Applications; priority of approvals; conditions precedent; consultation with agencies

(c) No payment may be made to any local educational agency under subsection (a) of this section except under application therefor which is submitted through the appropriate State educational agency and is filed with the Commissioner in accordance with regulations prescribed by him, and which meets the requirements of section 636 (b) (1) of this title. In determining the order in which such applications shall be approved, the Commissioner shall consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications and the nature and extent of the Federal responsibility. No payment may be made under subsection (a) of this section unless the Commissioner finds, after consulation with the State and local educational agencies, that the project or projects with respect to which it is made are not inconsistent with over-all

State plans for the construction of school facilities. All determinations made by the Commissioner under this section shall be made only after consultation with the appropriate State educational agency and the local educational agency.

Payments to local agencies; repayment of unexpended funds

(d) Amounts paid by the Commissioner to local agencies under subsection (a) of this section may be paid in advance of, or by way of reimbursement for, work performed or purchases made pursuant to the agreement with the Commissioner under this section, and may be paid in such installments as the Commissioner may determine. Any funds paid to a local educational agency and not expended or otherwise used for the purposes for which paid shall be repaid to the Treasury of the United States.

Application of sections 631-640 of this title

(e) None of the provisions of sections 631 to 640 of this title, both inclusive, other than section 636(b)(1) of this title, shall apply with respect to determinations made under this section. Sept. 23, 1950, c. 995, § 14, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 555, and amended Oct. 3, 1961, Pub.L. 87-344, Title I, § 101(b), 75 Stat. 759.

§ 645. Definitions

For the purpose of this chapter—

(1) The term "Federal property" means real property which is owned by the United States or is

leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Such term includes real property which is owned by the United States and leased therefrom and the improvements thereon, even though the lessee's interest, or any improvement on such property, is subject to taxation by a State or a political subdivision of a State or by the District of Columbia. Except for the purposes of section 640 of this title, such term also includes (A) real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States, and (B) any school which is providing flight training to members of the Air Force under contractual arrangements with the Department of the Air Force at an airport which is owned by a State or a political subdivision of a State. Notwithstanding the foregoing provisions of this paragraph, such term does not include (A) any real property used by the United States primarily for the provision of services or benefits to the local area in which such property is situated, (B) any real property used for a labor supply center, labor home, or labor camp for migratory farm workers, (C) any real property under the jurisdiction of the Post Office Department and used primarily for the provision of postal services, or (D) any low-rent housing project held under title II of the National Industrial Recovery Act, the Emergency Relief Appropriation Act of 1935, the United States Housing Act of 1937, the Act of June 28, 1940 (Public Law 671, Seventy-sixth Congress), or any law amendatory of or supplementary to any of such Acts.

(2) The term "child" means any child who is within the age limits for which the applicable State provides free public education.

(3) The term "parent" includes a legal guardian or other person standing in loco parentis.

(4) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State.

(5) The membership of schools shall be determined in accordance with State law or, in the absence of State law governing such a determination, in accordance with regulations of the Commissioner; except that, notwithstanding any other provision of this chapter, where the local educational agency of the school district in which any child resides or contracts to make a school situated in another school district, for purposes of this chapter the membership of such child, shall be held and considered—

(A) if the two local educational agencies concerned so agree, and if such agreement is approved by the Commissioner, as membership of a school of the local educational agency receiving such tuition payment;

(B) in the absence of any such approved agreement, as membership of a school of the local agency so making or contracting to make such tuition payment.

In any determination of membership of schools, children who are not provided free public education (as defined in paragraph (4)) shall not be counted.

(6) The average per pupil cost of constructing minimum school facilities in the State in which the school district of a local educational agency is situated shall be determined by the Commissioner of Education on the basis of the contract cost per square foot under contracts for the construction of school facilities (exclusive of costs of site improvements, equipment, and architectural, engineering, and legal fees) entered into in the State for the base year designated in the application, increased by a percentage estimated by the Commissioner to represent additional costs for site improvements, equipment, and architectural, engineering, and legal fees, and multiplied by a factor estimated by the Commissioner to represent the area needed per pupil in minimum school facilities. If the Commissioner finds that the information available for the State concerned for such preceding fiscal year is inadequate or not sufficiently representative, he shall determine such cost on the basis of such information as he has available and after consultation with the State educational agency. The cost of constructing minimum school facilities in the school district of a local educational agency shall be determined by the Commissioner, after consultation with the State and local educational agencies, on the basis of such information as may be contained in the application of such local educational agency and such other information as he may obtain.

(7) Estimates of membership, and all other determinations with respect to eligibility and maximum amount of payment, shall be made as of the time of the approval of the application for which made, and shall be made on the basis of the best information available at the time of such approval.

(8) The terms "construct", "constructing", and "construction" include the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

(9) The term "school facilities" includes classrooms and related facilities; and initial equipment, machinery, and utilities necessary or appropriate for school purposes. Such term does not include athletic stadiums, or structures or facilities intended primarily for athletic exhibitions, contests, or games or other events for which admission is to be charged to the general public. Except as used in sections 639 and 640 of this title, such term does not include interests in land and off-site improvements.

(10) Whether or not school facilities are minimum school facilities shall be determined by the Commissioner, after consultation with the State and local educational agencies, in accordance with regulations prescribed by him.

(11) The term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education or which has responsibility for the provision of such facilities.

(12) The term "State educational agency" means the officer or agency primarily responsible for the

State supervision of public elementary and secondary schools.

(13) The term "State" means a State, Puerto Rico, Guam, the Virgin Islands, or Wake Island.

(14) The terms "Commissioner of Education" and "Commissioner" mean the United States Commissioner of Education.

(15) The term "base year" means the regular school year preceding the fiscal year in which an application was filed under this chapter or the regular school year preceding such school year, as may be designated in the application, except that in the case of an application based on children referred to in paragraph (2) or (3) of section 635(a) of this title, the base year shall in no event be later than the regular school year 1960-1961; and

(16) The term "increase period' means the period of two consecutive regular school years immediately following such base year. Sept. 23, 1950, c. 995, § 15, as added Aug. 12, 1958, Pub.L. 85-620, Title I, § 101, 72 Stat. 556, and amended June 25, 1959, Pub.L. 86-70, § 18(c), 73 Stat. 144; July 12, 1960, Pub.L. 86-624, § 14(c), 74 Stat. 414; Oct. 3, 1961, Pub.L. 87-344, Title I, § 101(c), 75 Stat. 759.